

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 February 2003

CASE NO.: **2000-CAA-00007**

In the Matter of

JEANNE SAYRE,
Complainant,
v.

VECO ALASKA INCORPORATED

and

ALYESKA PIPELINE SERVICES COMPANY,
Respondents.

For the Complainant:

A. Alene Anderson, Esq.
Jacqueline O. Kittrell, Esq.

For the Respondent, VECO Engineering:

Thomas M. Daniel, Esq.
Helena L. Hall, Esq.

For the Respondent, Aleyska Pipeline Service Co.:

Charles P. Flynn, Esq.
Thomas P. Owens, III, Esq.

Before: Richard K. Malamphy
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of the Clean Air Act, 42 US Code section 7622, the Toxic Substance Control Act, 15 US Code section 2622, the Solid Waste Disposal Act, 42 US Code section 6971, and the Water Pollution Control Act, 33 US Code section 1367.

A formal hearing was held in Anchorage, Alaska on the week days from April 18 to 27, 2001.

The findings and conclusions which follow are based upon a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations and pertinent precedent.

Preliminary Matters¹

On April 4, 1997, Jeanne Sayre (Complainant) filed a complaint of retaliation against Alyeska Pipeline Service Company (Alyeska) and VECO Engineering (VECO) (conjunctively referred to as Respondents). Alyeska operates and maintains the Trans-Alaskan Pipeline on behalf of owner companies and contracts some of its work out to various contractors; one such contractor is VECO Engineering. The Complainant, a VECO Field Designer, alleged that the Respondents unlawfully harassed her and terminated her employment on March 24, 1997, in retaliation for her engaging in certain protected activities. The complaint was referred to the Office of Administrative Law Judges under cover of letter dated May 12, 1997.

By document filed August 5, 1997, Complainant submitted an Amended Complaint, alleging that Respondents failed to re-hire Complainant for at least thirty-five (35) positions for which she was qualified, but not selected. The case was assigned to Administrative law Judge David DiNardi and that Judge determined that it was judicially efficient and procedurally proper to accept the Amended Complaint.

Judge DiNardi presided at a hearing in October 1998. In a Recommended Decision and Order issued in May 1999 (Case No.: 1997-TSC-6), that Judge awarded back pay and other damages but denied the second complaint.

¹ The following abbreviations will be used as citations to the record:

JX	-	Joint Exhibits;
TR	-	Transcript of the Hearing;
CX	-	Complaint's Exhibits;
AX	-	Alyeska's Exhibits; and
VX	-	Veco's Exhibits.

Each Respondent filed a petition for review with the Administrative Review Board (ARB). Subsequently, the parties reached an agreement and the Complainant requested that the ARB approve the settlement and dismiss the case. The ARB agreed and took such action on September 30, 1999 (ARB Case Nos. 99-091 and 99-092).

Current Matters

On October 27, 1999, Ms Sayre filed a complaint with the U. S. Department of Labor (DOL) alleging unlawful retaliation on the basis that earlier that month her supervisor

Jodee Johnson told me and other VECO employees that absolutely no one is to send any letters to the Joint Pipeline Office (JPO) without first going through her. On October 8, 1999, Jodee Johnson told me that I would not be permitted to serve as the spokesperson Continuous Improvement Program (CIP). On October 9, Jodee Johnson called me and stated that VECO would be conducting an investigation into allegations that I was creating a hostile work place.

Several days later, Sayre requested Alyeska ECP (Employee's Concern Program) conduct an investigation into my allegation that VECO's investigation against me was in retaliation for my role in raising concerns and filing DOL complaints. Alyeska has refused to conduct an independent investigation into my allegation, stating they would rely on the results of the investigation being conducted by VECO. This refusal is inconsistent with Alyeska's ECP policies and past practice, and I believe it is in retaliation for my successful earlier complaint against Alyeska.

On January 19, 2000, the Regional Administrator of Occupational Safety and Health Act (OSHA) informed the Complainant

In your particular case, it was determined that you did not suffer an unfavorable personnel action (reprisal). Rather, the preponderance of the evidence obtained revealed that the actions taken against you were not discriminatory. For example, you stated that you were informed by your supervisor that all correspondence must be forwarded to her and not to the JPO directly. While there were conflicting statements as to what exactly was said, these instructions were given to all

employees and you were not subjected to any disparity. With regard to your non-selection to the CIP committee, there was no evidence to support that you were not selected because of your engagement in protected activity and that this was an unfavorable personnel action. With respect to the complaint of creating a hostile working environment, your supervisor did not initiate this complaint nor was there any evidence of coercion on her part to enlist co-workers to file a complaint. Finally, there was no evidence to support your allegation that Alyeska contributed in the retaliatory actions against you. All of your complaint issues filed with their ECP were acted upon. While you believe that their and VECO's actions are in direct violation of the "zero tolerance" code of conduct policy, the Department of Labor has no authority to enforce an internal company policy. Accordingly, pursuant to 29 CFR Part 24, your complaint is being dismissed.

In a complaint filed on February 15, 2000, Sayre recited events prior to October 1999, and stated that

In November of 1999 I was ordered to attend a meeting with Mr Bob Hanson, later identified as Bob Atkinson, for the purpose of investigating accusations that I had created a hostile work environment in the office.

On January 24, 2000 I was ordered to attend an unscheduled meeting in Fairbanks with John Conway, for the single exclusive delivery of a Letter of Reprimand stemming from the November 1999 prejudiced and rank amateurish investigation performed by Mike Ebersole's admitted personal friend, Bob Atkinson (Hanson). This letter of reprimand listed total lies, falsehoods, and was mean spirited in nature. VECO clearly did not follow their own process for issuing letters of reprimand and John Conway is not my supervisor. Ms. Pat Lee was present during this meeting but did absolutely nothing when John Conway raised his voice at me and demanded that I "just get off that subject!" The subject being that the investigation was a complete one sided farce and simply more retaliation against me for having engaged in a protected activity.

I still, to this day, continue to be subjected to blatant hostility, gross humiliation, upper managements' continuous intimidation, & openly

obsessive retaliation by VECO since the October 1998, DOL Hearing.

Alyeska has refused to gain any control over this contractor and the unacceptable behaviors of VECO's Managers. Alyeska's ECP has substantiated & documented the retaliation against me for engaging in a protected activity. Alyeska's ECP also investigated & substantiated vicarious harassment towards me, which was ordered by Mike Ebersole, VECO Senior Vice President. Yet, Alyeska has still taken no disciplinary action and adamantly refuses to hold VECO accountable for the reprehensible, detestable and illegal behaviors.

In April 2000, the Regional Administrator informed the Complainant that

In your new complaint, you alleged that respondent VECO has continued in their retaliation against you by now issuing you a written warning for the hostile work environment that you allegedly created. Further, that respondent Alyeska has failed to hold them accountable. As these issues are identical or stem from the ones currently before Judge Malamphy, we are dismissing your complaint without an investigation and forwarding this matter to him for review.

On June 23, 2000, Sayre amended the complaint in a letter to the undersigned ALJ. The Complainant stated

On May 31, 2000, VECO suspended Ms. Sayre for two weeks, without pay, alleging that she failed to follow the instructions set forth in January.

The undersigned subsequently agreed to accept this complaint as an issue at the trial.

On February 9, 2001, Complainant's counsel informed the Regional Administrator that Ms. Sayre was discharged from employment on January 18, 2001 in further retaliation for her protected activity in bringing complaints to the Department of Labor and as identified in her earlier complaints. Judge Malamphy has verbally indicated his willingness to include the issue of the retaliatory discharge in the upcoming hearing.

Please consider this notification as a formal complaint pertaining to Ms. Sayre's discharge as

required under the rules and we request that you forward the matter to Judge Malamphy for the issues to be adjudicated in the upcoming hearing.

Relationship Among the Parties

In the pre-trial brief, Alyeska stated that the firm operates the Trans Alaska Pipeline System ("TAPS"). That system stretches from the North Slope of Alaska approximately 800 miles south to Valdez, Alaska, where the oil is loaded on tankers bound either for the West Coast of the United States, or the Far East. Alyeska has no ownership interest in the oil, the pipeline itself, or the tankers. It is the common operating agent of the seven oil pipeline companies which do own the pipeline, and which ship oil for the North Slope producers.

Alyeska is presently organized into three main administrative units. These are the Fairbanks Business Unit, which has responsibility for pipeline operations, the Valdez Business Unit, which has responsibility for the Valdez Marine Terminal and the Ship Escort Response Vessel Service (SERVS) which escorts tankers out of Prince William Sound, and the Corporate Business Unit, which is located in Anchorage and provides executive and staff support to the other two units. The system is operated as a common carrier, and the oil pipeline companies file tariffs which are approved and regulated by state and federal agencies. In addition, the system is located on state and federal land as it crosses Alaska, and there are leases and right-of-way agreements between the oil pipeline companies and the respective governments which impose conditions upon the way in which the system is operated. The state and federal governments have constituted a multi-agency task force known as the Joint Pipeline Office, composed of representatives from many state and federal agencies, which serves as Alyeska's primary regulator.

The oil begins its journey at Pump Station 1 on the North Slope of Alaska, and there are a series of pump stations along the route south. The function of these pump stations is to keep the oil flowing. These are self-contained facilities, all of which are in remote locations, and which are responsible for all

pipeline facilities within a certain segment of the pipeline. This would include the pipe itself, its supporting structures, remote gate valves (RGV's), and the various systems which pump the oil further south.

VECO is the major engineering services contractor on the pipeline, and is responsible, among other things, for providing design and drafting support for the Pump Stations. This includes, importantly, bringing the engineering drawings which depict the actual arrangement of equipment in the Pump Stations, into compliance with various standards. This drawing update has been the focus of several different programs, and is the focus of Action Audit Item (AAI) 1955. This was one of 4,000 plus audit action items arising from a series of audits conducted of the Pipeline by Alyeska and governmental regulators starting in 1993. Jeanne Sayre was an employee of VECO Engineering, assigned to work on the Trans Alaska Pipeline System at Pump Station 7, as a designer/drafter. Pump Station 7 is just north of Fairbanks, Alaska.

Pre-Trial Brief of VECO Alaska, Inc.

The following is recited merely to give some concept as to the chronicity of events in this case.

In October 1999, three of Sayre's coworkers complained to their lead, David Walters, that Sayre was confrontational, rude, and condescending in her communications with them, and that she failed to follow the established procedures for resolving tagging problems with the drawings she worked on. The lead informed Sayre's direct supervisor, Joanne Johnson, of this complaint. Johnson, in turn, passed the complaint on to Lynn Palazzotto, VECO's Corporate Litigation Manager.

After first consulting with a representative of the Alyeska Employee Concerns Program ("ECP"), a program that investigates complaints related to the Pipeline, Palazzotto was assigned responsibility for investigating the complaints against Sayre.

After Sayre learned that an investigation was underway because of the complaints of her coworkers, she filed a complaint with the Alyeska Employee

Concerns Program alleging retaliation for her prior "DOL victories." Alyeska determined that this complaint should be addressed in conjunction with the concerns raised by Sayre's coworkers.

Sayre also complained that Palazzotto could not conduct an impartial investigation of the complaints against her. Consequently, VECO hired an outside consultant, Robert R. Atkinson, to investigate the complaints made by Sayre and her coworkers.

In October and November 1999, Atkinson interviewed Sayre and thirteen of her coworkers, and reviewed numerous documents. He prepared a comprehensive 25 page (including exhibits) report detailing his findings. He concluded: (1) Sayre had failed to comply with VECO and Alyeska procedures; (2) Sayre had exhibited an unwillingness or inability to constructively interface with other employees and departments; (3) Sayre had treated her coworkers and colleagues in a rude, discourteous or improper manner; and (4) Sayre had made false accusations against a coworker.

For example, at a September 28, 1999, pre-review meeting, an issue came up about how a level switch should be drawn. A discussion about the position in which the switch should be depicted ensued. Sayre ended the discussion by saying essentially, "Do what you want to... I'll just change it when it gets back to the Pump Station." Additionally, in September 1999, David Walters, Sayre's lead, sent out an all department email to try and clarify the procedure for installing certain tags in the system. Sayre requested clarification and Karen Nelson responded via email in an attempt to resolve Sayre's questions. Sayre responded to Nelson with a demeaning, confrontational and condescending email that included statements like: "Any questions? Are you with me? Are you still with me?" Also, Sayre had accused her alternate, Rob Sanabria, of recording time which he did not actually work. Yet, Sayre was in no position to know the hours Sanabria worked and the allegations were false.

Atkinson found no evidence that any of the complaining coworkers were bringing forward their concerns in retaliation for Sayre's prior DOL complaints.

On October 25, 1999, Sayre filed a Department of Labor complaint alleging that the complaints by her coworkers and VECO's investigation of those complaints were retaliatory acts motivated by her earlier DOL complaints. Sandra Dillon, an OSHA investigator, investigated Sayre's complaint in November and December 1999.

On January 19, 2000, investigator Dillon issued a written opinion rejecting Sayre's October 25, 1999, complaint and finding there was insufficient evidence to establish Sayre's retaliation claims. Sayre appealed this finding, which is one of the issues in this appeal.

On January 24, 2000, VECO issued Sayre a written warning based upon the findings in the Atkinson report. This warning included a plan of correction and provided specific examples of Sayre's unprofessional behavior. VECO was instructing her to: (1) cooperate with her colleagues, clients, coworkers and supervisors; (2) be courteous, professional and civil in communications and meetings with colleagues, coworkers, clients and supervisors; (3) follow procedures; and (4) follow the instructions of her supervisor. The warning also cautioned that a failure to correct her behavior would result in further discipline.

On February 14, 2000, Sayre filed a second complaint with the DOL. This complaint alleged that the written warning she received in January 2000 and the counseling session were retaliation for her prior DOL complaints. The DOL found that this second complaint raised issues that were identical to or stemmed from the issues raised by the first complaint that was pending in this appeal. The two complaints were consolidated into this appeal.

In March or April 2000, a different VECO employee filed a complaint with the Alyeska Employee Concerns Program complaining that Jeanne Sayre had created a hostile atmosphere through her conduct at and after a March 24, 2000, meeting concerning the North Pole Metering Station Project. This complaint also alleged that Sayre's minutes of this meeting created a hostile environment and her turnover notes related to this meeting were unprofessional and discourteous. Alyeska asked VECO to resolve it.

VECO again hired Robert Atkinson to investigate. Atkinson interviewed Sayre and six of her coworkers involved in the March 24 meeting and its aftermath. Atkinson prepared a detailed 25 page report (including exhibits) in which he concluded that Sayre: (1) had disregarded the processes established at the March 24, 2000 meeting for resolving certain issues raised at that meeting by assigning tasks to herself that had been assigned to others; (2) had again failed to follow VECO and client procedures; (3) had misrepresented what had happened at the meeting in her March 2000 turnover notes; and (4) had assigned herself tasks that had been assigned to others at the meeting.

Based upon Atkinson's second written report, on May 31, 2000, VECO gave Sayre a second written warning and suspended her for two weeks. This second written warning again instructed her: to work on cooperating with her coworkers and colleagues; to be courteous, professional and civil in her communications with coworkers, colleagues and clients; to follow established procedures; and to follow the instructions of her supervisors. In June 2000, Sayre moved to amend her complaint in this action to add a claim that this warning letter and suspension were further retaliation.

On October 9, 2000, Sayre sent an email to VECO Human Resources accusing her lead, David Walters, of "spreading unfounded rumors" and making "untruthful statements about [her] character & work situation" at an October 4, 2000, design/drafting meeting. She asked the Human Resources representative to "question all those individuals who participated in the October 4, 2000 design/drafting meeting."

Shortly afterwards, Dave Walters made a complaint that Sayre was again creating a hostile work environment in the Fairbanks office. VECO again hired Atkinson to investigate. Atkinson interviewed Sayre and nine of her coworkers (including everyone present at the meeting in which Walters allegedly made the "unfounded remarks"). All of the participants in the October 4, 2000, meeting agreed that Sayre had not been singled out as a topic of conversation during the meeting and that no derogatory remarks were made about her. All those interviewed stated that Walters had only made general remarks that document technicians

might replace all of the field designers. All agreed that Sayre was not singled out nor were any derogatory comments made about her.

Additionally, Atkinson learned that Sayre had engaged in further inappropriate communications with her coworkers. On October 31, 2000, Sayre sent a 29-page document to Walters, accusing a coworker of attributing errors to her in an EDAC report. In fact, the errors attributed to Sayre were flagged automatically by the computer system, not the coworker. He also learned that on October 28, 2000, Sayre had sent an email to several representatives of VECO's client, including the PS7 Asset Manager, in which she pointed out a possible problem with the revised tag numbers on drawings for the North Pole Metering Station. However, Sayre had not bothered to alert her own lead, her supervisor, or any other VECO personnel to the issue before addressing this issue with VECO's client. Consequently, VECO personnel were blindsided and had no opportunity to address the issue before hearing it from the client.

VECO concluded that these latest events demonstrated that Sayre had not taken to heart the two prior warning letters. Instead, Sayre was continuing to engage in the same type of behavior she had been warned about twice before – hostility in dealings with her coworkers, bypassing normal communication channels and making false accusations against coworkers. VECO also concluded that Sayre's behavior pattern was causing substantial disruption in the workplace and interfered with her coworkers' ability to perform their work effectively and efficiently. Indeed, many of Sayre's coworkers avoided dealing with her because she was so uncooperative, uncompromising, and hostile. Instead, coworkers would attempt to work around her, putting off issues until they could deal with her alternate or some other person.

Based on these latest findings, VECO terminated Sayre's employment on January 18, 2001. Sayre alleges that her termination was further retaliation and she has amended her appeal in this matter to include this issue.

Prehearing Statement from the Complainant

It is reported that

In the course of her employment at (pump station) PS#7 that followed the DOL hearing in October 1998, Ms. Sayre continued to raise many environmental and safety quality control issues. She disclosed these issues to her Alyeska supervisors, to Alyeska engineers, to the Alyeska ECP, to her VECO supervisors, to VECO engineers, and to government agencies, including the Joint Pipeline Office (JPO).

Testimony and exhibits that will be introduced at the hearing, will establish that Ms. Sayre engaged in, inter alia, the following protected activities:

- 1) Reporting unlawful retaliation to the United States Department of Labor and to the Alyeska ECP, and to VECO and Alyeska management officials.
- 2) Reporting that engineering work was being accomplished with less than full adherence to the quality control requirements set forth by Alyeska procedures.
- 3) Reporting that the federal grant of right-of-way requiring the use of proven engineering practices was ignored with respect to an installation known as the North Pole Metering facility.
- 4) Reporting failure to comply with the Quality Program requirements for redline drawing review/approval of redline drawings reflecting "as found" changes to TAPS structures, systems, and components. (Configuration Baseline documents have been identified as necessary to the safe operations of TAPS).
- 5) Reporting potential violations of the environmental statutes in the failure to properly identify and designate classification areas where toxic chemicals are found.

At the hearing, a preponderance of the evidence will establish that Ms. Sayre engaged in activities protected by the environmental statutes and that she was subjected to harassment, discipline and discharge in violation of those statutes and is entitled to all remedies allowed by law.

Pertinent Law

The Clean Air Act (CAA) at 42 U.S.C. §§7622 states

EMPLOYEE PROTECTION

"SEC. 322. (a) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)-

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement, imposed under this Act or under any applicable implementation plan,

"(2) testified or is about to testify in any such proceeding. or

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

"(b) (1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

The Toxic Substance Control Act, the Solid Waste Disposal Act, and the Water Pollution Control Act contain similar provisions.

October 25, 1999 Complaint to DOL

In the above letter, the Complainant stated in part

In February 1998, I filed a second DOL complaint against VECO that resulted in an investigation substantiating my allegations. Both Alyeska and VECO decided not to pursue an appeal but settled.

After I filed the second complaint, Jodee Johnson, my VECO Supervisor, told me that she would find another way to pursue her attacks on me. Following that comment, VECO has attempted to prevent me from identifying mechanical and electrical problems on the pipeline by prohibiting me from linking equipment identification numbers with drawings in the Alyeska Electronic Database. I objected to this interference of me performing my job. I believe that failure to properly identify and resolve these operational problems raises a significant number of serious safety and environmental concerns.

On October 7, 1999, Jodee Johnson told me and other VECO employees that absolutely no one is to send any letters to the Joint Pipeline Office without first going through her. On October 8, 1999, Jodee Johnson told me that I would not be permitted to serve as the spokesperson Continuous Improvement Program. On October 9, Jodee Johnson called me and stated that VECO would be conducting an investigation into allegations that I was creating a hostile work place. Jodee refused to tell "you" what I allegedly did to create the alleged hostile work environment or who made the allegations. I am concerned that any allegations that I created a hostile work environment was either created by VECO senior management or in retaliation by co-workers for my role in raising concerns.

I notified Alyeska's Employee Concerns Program (Gary Smith, ECP Representative) and asked Alyeska to conduct an investigation into Jodee Johnson's illegal interference with VECO employees rights to file concerns with the Joint Pipeline Office. On October 14, I met with Ed Morgan ECP Manager, Rob Shoaf, Sr. Vice President, and D. Earl Hall, Lead Inspector to request that Alyeska hold VECO managers responsible for continuing harassment and retaliation in accordance with Alyeska policy. I was informed that Alyeska

intended to take no action. I was told that Jodee Johnson could not be held accountable for her acts of retaliation against me because she was directed to do it by high level VECO managers.

I requested Alyeska ECP conduct an investigation into my allegation that VECO's investigation against me was in retaliation for my role in raising concerns and filing DOL complaints. Alyeska has refused to conduct an independent investigation into my allegation, stating they would rely on the results of the investigation being conducted by VECO. This refusal is inconsistent with Alyeska's ECP policies and past practice, and I believe it is in retaliation for my successful earlier complaint against Alyeska. (CX 1).

Jeanne Sayre

At the hearing, Ms. Sayre testified that AAI 1995 was an action audit item mandated by Congress. Drawings were to be updated, documentation would be in order, and these would be retrievable with the use of a computer. This was to be completed in June 2000. (TR 85, 88).

Sayre would "redline" old drawings where mechanical updates had been made. The newly updated and revised drawings would come back from Fairbanks, and we are required to check those drawings against the original redlines we have at the pump station, and make sure all the information was transposed properly and as was redlined. (TR 74).

On August 17, 1999, Sayre met with Rob Merdes and Jim Giles regarding the high number of errors on the "corrected drawings." (TR 90).

On September 10, 1999, Sayre sent an e-mail to Robert Malone, President of Alyeska, and expressed concern about prematurely closing out AAI 1995. (JX 64). Malone sent Dan Heizy, Valdez business unit vice president, and Bill Howitt, Fairbanks business unit vice president to review the drawings, and Malone came to Pump Station 7 later that year. (TR 106).

On September 25, 1999, John Conway, then president of VECO issued a statement on an open work environment. (CX 77).

On October 7, 1999, VECO held a teleconference with designers and drafters. Personnel were at various sites and

Sayre was at Pump Station 7. Sayre attempted to tape record the session but the recording was not complete. Sayre acknowledged that company policy prohibited tape recording. (TR 527).

By e-mail on October 8, 1999, Joanne (Jodee) Johnson informed Sayre that

Per our conversation this morning, I notified you of a concern raised by several individuals regarding a potential hostile environment that you are creating. May I remind you that both Alyeska and Veco have zero tolerance for harassment of co-workers or other TAPS employees. Any HIRD (harassment, intimidation, retaliation and discrimination) issues raised by a Veco employee is not taken lightly. As a result, I have requested Lynn Palazotto to complete the investigation and interview individuals involved. She will be in contact with you to interview you as part of the investigation.

During our earlier conversation, I requested that you copy me on all future electronic communications that you have with personnel in the Fairbanks office. This is a short term request that is necessary to ensure that a hostile environment is not occurring from now until the investigation is complete. Pending the results of the investigation, I will revisit this request. (AX 89).

Sayre responded later that day and stated that

As I requested earlier in our conversation, I would like to know who made these accusations, to help me determine what is prompting them to make these discrediting claims. This is very serious accusation, very similar to your last attempt and from where I stand, I have valid suspicions as to what is the underlying motivation(s).

It your accusation is in regard to the PS#7 drawing redlines, which by the way, our Facility Electrical Engineer had approved and signed, we definitely need to discuss this issue! There have been emails flying back and forth through-out the company regarding accurate, signed, and approved redlines not being integrated into the updated drawings. This is a line wide issue and needs to be addressed along with

other inappropriate activities documentation associated with the Alyeska Drawings.

I view this as yet another attempt by you to carry out your obesssive agenda to have me fired. We need to get beyond those hard feelings and renew our effort to serve Alyeska's best interests by providing quality jobs to the client. The past is the past, we need to leave it there, then get on with the present.

Complainant's counsel asked Sayre

Q Okay. In your e-mails, in your responses to Ms. Johnson, were you sarcastic with her at times?

A Yes.

Q Were you upset with what was going on?

A Absolutely.

Q Do you feel you were being treated very unfairly?

A I feared being fired. I felt I was singled out. I was targeted, and they were going to fire me this time.

Q Did you feel like this was ongoing retaliation for the concerns that you were raising?

A Absolutely. (TR 207).

In an e-mail to Malone on October 10, Sayre stated

I do hope you follow this issue closely. I also hope I have the opportunity to review the investigation Mr. Morgan performs. You see, I know first hand the person(s) involved do not tell the truth. This was evidenced during my DOL Hearing. May I also suggest that your staff looks into a very disturbing incident involving this same individual.

In our last staff meeting, on Thursday, October 7, 1999, Ms. Johnson told all those present at DIF and those listening on the meet me line that "no one is to send any letters to the JPO without going through her (Johnson) first." There are individuals who know this statement is in direct violation of the law, but the

point I am making is that there have been numerous 'new-hires' in the VECO Fairbanks office and for her to deliberately mislead them on this matter is completely inappropriate, unprofessional and illegal. I understand there is a audio tape floating around of this meeting and her statement is on it. May I also add that the potential for her to again, not tell the truth about her intimidating statement, is a high probability.

Sayre acknowledged that she gave the tape to OSHA/DOL after the complaint was filed in October. However, she did not give the tape to Malone or to Alyeska ECP when she filed a complaint. (TR 535).

The Complainant reported that her first knowledge of the allegation of her creating a hostile work environment was stated by Johnson on October 8. (TR 115). Johnson indicated that the allegations and the complainers were confidential but that there would be an investigation.

About October 15, 1999, Sayre met with Morgan from Alyeska ECP, Shoaf a vice president for Alyeska, and Earl Hall. Morgan stated that VECO rather than Jodee would be held accountable as Mike Ebersole, a vice president of VECO, directed Jodee to retaliate. (TR 121).

Sayre asked Malone to pull the badges of Johnson and Ebersole so that they could not continue to harass her on the pipeline project. The Complainant also wanted Alyeska to terminate VECO's engineering service contract for the same reasons. (TR 576-8).

The Complainant acknowledged filing at least 20 8811s but did not know the results and these were anonymous complaints.

In September, Sayre and others attended a preview meeting for the purpose of ensuring that drawings did not come back full of errors a third time. The drawing of a level switch on a sump pump was mentioned and Sayre stated that she could not change the position of the switch unless an engineer such as Charlie Lee changed the drawing. Sayre did not feel that she was rude to Keith Nuss or anyone else at the meeting.

The first Atkinson report states that

Initial Allegations

On October 4, 1999, a VECO lead employee reported to his supervisor, Jodee Johnson, that he had received complaints from three people who work with Jeanne Sayre. These employees alleged that she creates a hostile work environment, behaves unprofessionally, tells people how to do their jobs and periodically fails to follow proper procedures.

VECO's Response to the Complaint

On October 4, 1999, Ms. Johnson made a request to VECO's litigation department for assistance in looking into those allegations. At this time, Ms. Johnson informed Ms. Sayre that complaints had been raised about her and that Lynn Palazzotto would be looking into the allegations. Ms. Palazzotto began investigating the complaint. On the second day of the investigation, a representative of the Alyeska Pipeline Service Company Employee Concerns Program informed Ms. Palazzotto that Ms. Sayre did not believe that VECO could investigate the complaints against her in an unbiased manner. To insure that this investigation was neutral and unbiased, VECO hired Bob Atkinson, a consultant who specializes in personnel and human resources issues, to conduct the investigation. Mr. Atkinson interviewed thirteen Alyeska and VECO employees who work with Ms. Sayre. He also interviewed Ms. Sayre. This summary is based on the report he compiled from these interviews.

Summary of Sayre's Response to the Allegations

On October 27, 1999, Mr. Atkinson interviewed Ms. Sayre in person. In this interview she was informed that her coworkers had complained that she: (1) had difficulty in collaborating with others to get work done; (2) was rude, discourteous or improper in her treatment of colleagues and clients; and (3) at times did not follow Alyeska and VECO procedures. Specific instances of each kind of alleged behavior were given. Ms. Sayre denied all of the allegations and gave her version of the incidents discussed. When asked why her coworkers would view her behavior in this way, she responded that it was because Ms. Johnson "has poisoned the group against her."

Summary of the Evidence

Ms. Sayre's colleagues and coworkers told Mr. Atkinson that they feel that she is condescending, demeaning and confrontational. Jeanne does not talk through issues with colleagues to find a solution. Instead, she insists on doing things her way. Colleagues and coworkers are so frustrated in their dealings with Jeanne that they avoid interaction with her and put off issues until her alternate arrives. This results in a "stacking of work" that is inefficient and unnecessary.

Colleagues and coworkers also reported that Jeanne has failed to follow correct procedure regarding: (1) requests for ER numbers; (2) Z numbers; (3) the release of drawings that are to be routed through the As-Built Coordinator, and (4) tag number assignments that are to be routed through the FBU Equipment Tag Specialist. They also report that she refuses to follow the procedure that final approval for Pump Station Drawings resides with the Facility Engineer.

It was also reported that Jeanne accused her alternate, Rob Sanabria, of falsifying his time sheets. An investigation determined that there was no falsification.

Conclusions

Based upon its investigation, management has concluded:

- (1) Ms. Sayre has failed to comply with VECO and Alyeska' procedures;
- (2) Ms. Sayre has exhibited an unwillingness or inability to constructively interface with other employees and departments;
- (3) Ms. Sayre has treated her coworkers and colleagues in a rude, discourteous or improper manner; and
- (4) Ms. Sayre made false accusations against a coworker.

Ms. Sayre's conduct violates Section L2 of VECO's Employee's Guide to Policies and Procedures which provides guidelines for appropriate workplace conduct.

Recommendations

To insure that Ms. Sayre understands the applicable workplace rules and standards of conduct, she should be counseled regarding her inappropriate behavior. This counseling should include a clear statement of what is expected of Ms. Sayre and

should establish a time frame in which she must exhibit improvement.

Any concerns Ms. Sayre has regarding her current environment or supervisor could be remedied by offering her a comparable position in a different location.

The persons who raised the initial complaint should be debriefed. (JX21).

When Sayre met with Atkinson, he reported that people at the meeting in early October had told him that she was argumentative, unprofessional, rude and discourteous. The Complainant disagreed with this assessment. (TR 140). Sayre and Atkinson discussed the switch gear drawing.

Atkinson stated that it had been reported that Sayre accused Bob Sanabria, her alternate, of falsifying time sheets. They did not discuss this issue and Sayre testified that this accusation was false. (TR 174).

Complainant's counsel recited part of JX4, Atkinson's first report, and this stated

Ms. Sayre imposes procedures and priorities upon Mr. Sanabria without corroborating with him, and then criticizes him for not completing what she has determined to be priority work.

Sayre testified that she merely provided her tickler list to Sanabria and was not trying to prioritize work for him. She felt that there was nothing derogatory in her turnover notes. (SX 159-168).

Early in 1999, Sayre filed a form 8811, an anonymous employee concern, regarding the marking of manufacturer's identity numbers on drawings. Sayre had put such numbers on drawings and Charlie Lee had marked these out. Sayre felt that the original numbers were necessary in order to avoid confusion.

In August, the Complainant filed a list of deficiencies that she found in the drawings. During September, Sayre worked with Ron Robinson and Doug Franklin on the technical data and drawing index (TDDI) to associate tag numbers with drawings.

Karen Nelson was in charge of assigning tag numbers and Sayre informed her that tag numbers were listed on the manual drawings which had to be associated into the TDDI.

Numerous e-mails were exchanged on September 29, 1999 and on one occasion Sayre informed Nelson and others

Hi there!

One last time to clear the confusion (hopefully???)

The tag numbers do, in fact, exist in the system.
The tag numbers do, in fact, exist in TDDI.
The tag numbers are usually not (key word not) listed against the 'manual' drawing number, (manual drawings) being those which are not AutoCADD).

Any questions? Are you with me?

Now.....for instance....

When a person searches for tag number 37-DPS-7-2 in TDDI, drawing number D-37-E1135, sheet 4, will not appear against that specific tag number. Try it. You'll see what I am talking about. I have redlined this information to that particular drawing, however.... without manually adding this drawing number to the TDDI Database, you can not effectively search for the 'link'.

Any questions? Are you still with me? (JX 4, p 691).
(See TR 375).

Sayre testified that she was using "Seinfeld humor" in trying to alleviate a rather tense situation. (TR 193). Nelson responded and indicated that she understood. Sayre stated that she did not intend to be insulting and was surprised when the e-mail was attached to the written warning in January 2000, as an example of confrontation with Ms. Nelson. (TR 196).

The Complainant testified that she was surprised that her coworkers filed complaints against her in October as she thought that she had good relationships with everyone but Johnson. (TR 326). Sayre filed a complaint with DOL as she thought that the investigation was retaliatory.

Sayre agreed that allegations had to be investigated but Sayre

believed it was retaliatory because she (Johnson) would not tell what the accusations were, or what specifically were the - was the instances of a hostile work environment. (TR 330).

Counsel for VECO and the Complainant discussed the turnover meetings in 1998 and early 1999 between Sayre and Johnson. Sayre acknowledged that she had reported that

Jodee Johnson would read your turn-over notes and from time to time make criticisms about your communication style, or the tone of your e-mails, or the language that you used in the e-mails.

Sayre reported that

She never explained to me how I should have communicated that. She never said -- she would say, "There's a better way of doing this," but she never said, "This what I would -- would be what I would want to see on your turn-over notes." She never was specific. She just said that, "There's a better way to communicate this." (TR 331 and 332).

Sayre met with John Conway, president of VECO Alaska, in the fall of 1999 and he suggested that the Complainant meet with her alternate, Rob Sanabria, to work out their differences. She felt that this was a good suggestion. VECO's counsel pointed out Sayre's counsel letter to DOL in April 1999 that suggested that Sanabria was paid for hours that he did not work, as an example of different treatment for others. (See VX 45).

At the meeting in September, Keith Nuss and the Complainant had a discussion as to how the level switch should be shown on the drawing. Sayre stated that she was frustrated but would not call the discussion "heated". (TR 352).

VECO's counsel noted the e-mails on October 6 that began with Walters informing numerous people that on the drawings we just received from PS7 there are some redline marks which are being rejected.

Sayre responded and stated, in part

I view your select 'criticisms' of my work as nothing more than ongoing harassment. Perhaps you are picking up where another has left off? Your trip to PS#7 yesterday was completely uncalled for, besides being an unnecessary additional cost to the client. I notified you on Monday, via e-mail, that our electrical engineer, Charley Lee, would not be on site until Thursday to discuss your disagreements to his approved

redlines, yet you still chose to come out to PS#7 to as-built the level switch you have in question.

I trust this retaliatory behavior you have been displaying toward me, will cease immediately. I am notifying you that I do not appreciate this behavior, it is unprofessional and it appears that we are working towards separate agendas. I would suggest that we put the past behind us and begin to accomplish the work environment goals established by VECO Alaska.

Johnson received a copy of the e-mail and informed Sayre that Walters had other reasons to be at PS#7.

Sayre responded and stated in part

The point that was made is Mr. Walters is not an engineer. Charley Lee is. Charley is the Alyeska assigned PS#7 Electrical Facility Engineer. If Charley signs and approves an electrical redlined drawing, the person who is 'overriding' Charley's approval, is to contact Charley and discuss this issue with him. Not discuss this issue with me. (Did you get that?) I do not have the authority to override Charley's approval. (Are you with me?) Charley was not on sight (still with me?) Dave knew this on Wednesday, but still chose to come out here anyway regarding this particular redline. Is it really that hard for you to understand? Do you now get it?

What I find is quite interesting here, is how you put your 'spin' on things to make it look like I am an undesirable employee. It caught up with you last time and I have the feeling it will catch up to you again.

You know what else? How can you (or I) expect Lynn Palazzotto to perform a third party investigation, when she also was part of my DOL Hearing? I suppose it would certainly be advantageous for her to find in the company's favor. After all, she is a VECO employee. And 'keeper' of my records. Something to think about, huh? (VX155).

Sayre testified that she was using Seinfeld humor rather than being insubordinate. (TR 373).

VECO's counsel noted that in the October 1999 complaint to DOL, the Complainant reported that in the October 7, 1999 meeting

Jodee Johnson told me and other VECO employees that absolutely no one is to send any letters to the Joint Pipeline Office without first going through her. On October 8, 1999, Jodee Johnson told me that I would not be permitted to serve as the spokesperson for the Continuous Improvement Program. On October 9, Jodee Johnson called me and stated that VECO would be conducting an investigation into allegations that I was creating a hostile work place. (JX 1).

Sayre testified that it was her understanding that Johnson meant that all communications to JPO were to go to her first.

Counsel noted that the November 1999 investigation by VECO employee concern program (ECP) included interviews of fifteen people who attended the October meeting. The report stated that

None of the meeting attendees, except Sayre, took her comments as prohibiting them from sending written concerns to the JPO. Some employees demonstrated a preference, if they were to raise concerns to the JPO, to submit personal correspondence to the JPO via Johnson. (JX 53).

Sayre testified that she did not interpret Johnson's comments to be limited to submission of design packages. (TR 384). Her tape recording of the meeting was incomplete.

Sayre did not feel that Bob Atkinson should be the investigator as he had reported that he was a friend of Mike Ebersole, a vice president of VECO, and was therefore biased. Counsel mentioned an October 28 e-mail to Gary Smith, an Alyeska ECP investigator. (AX 102). This message described Sayre's understanding of her interview with Atkinson.

VECO counsel then addressed VX 84, a November 11, 1999 e-mail from the Complainant to Gary Smith. This e-mail stated in part

I am AGAIN the person who receives the punishment for Jodee's retaliation obsession to have me fired.

I think it is time that the guilty party is FINALLY held accountable and removed from her position for good. Ebersole as well. These two individuals have no place in the workforce and bring VECO down the sewer pipes. Alyeska has openly chosen to not do a damn thing about this ongoing saga so for them, they

are ever bit as responsible for this shit to go on for over 1 full year.

I have done nothing but looked out for Alyeska's best interests and now I am on the receiving end of the most hideous, obscene, out in the open retaliation anyone could see and they want to get rid of me. I think not. I will take them down, AGAIN and this time I will make damn sure the Right of Way Agreement is specifically altered to include severe penalties for acts of retaliation, harassment, et al, against Whistleblowers.

I have the capacity to do something and I will be in their face so to speak, to make sure the press they receive is bad, very bad, very very bad.

The Complainant testified that she wanted Johnson and Ebersole off the Alyeska contract as no one was helping to put an end to the retaliation that she was receiving. (TR 410). She meant that she would seek action against Alyeska if those two were not removed.

On November 10, 1999, Atkinson submitted his "final report on hostile work environment in Fairbanks District." Atkinson had interviewed some 14 people including the Complainant. (See JX 5-20).

The report stated, in part

Witnesses reported that on repeated and significant occasions Jeanne Sayre, has demonstrated an inability or unwillingness to constructively interface with other employees or departments within VECO or the APSC client organization to reach resolution on normal issues that arise in the course of the work. This results in the expenditure of an inordinate amount of time and stress on the part of both VECO and APSC employees. Unfortunately, this problem appears to be trending worse and not better. As witnesses commented, this does not mean that employees should avoid 'pushing back' or elevating legitimate concerns when the integrity of the work may be at risk. However, several witnesses reported that 'pushing back' and elevation of concerns has become a predictable mode of interaction when dealing with Ms. Sayre. Because of this, it appears that the integrity of the work is at risk because the established processes (and the control function that they perform) are breaking down due to the following:

- Greatly increased cycle time to resolve routine documentation/drawing issues involving Ms. Sayre.
- Inordinate amount of work required due to need to research, call upon experts and document in order to resolve routine documentation/drawing issues involving Ms. Sayre. More than one witness stated that this problem is exacerbated by Ms. Sayre's habit of raising an objection as a 'showstopper' without doing her own research to substantiate her position.
- Inordinate demands on the time of experts, authorities and management within VECO and the APSC client organization in order to resolve routine documentation/drawing issues involving Ms. Sayre.
- A confrontational atmosphere when Ms. Sayre is involved that inhibits the open communication needed for effective problem solving and decision making.
- 'Giving in' on issues involving Ms. Sayre to avoid conflict, even when her colleagues believe it is not the right course of action.
- The above has had the affect of making interaction with Ms. Sayre punishing to her colleagues, and most witnesses reported that they therefore avoid interacting with her. This has resulted in stacking of work while awaiting her alternate, and additional workload on her alternate. (JX 4).

Gary Smith, an ECP investigator, submitted two reports to Ed Morgan on November 30, 1999. One report involved concerns expressed to Shoaf and Morgan by Sayre on October 14, 1999. These pertained to meetings to discuss turnover notes with Johnson between November 1998 and March 1999. (JX51).

The other report concerned Sayre's complaint filed on October 8, 1999 with ECP based on Johnson's retaliation. ECP interviewed five VECO employees as well as Charlie Lee, and the Atkinson report was reviewed.

Interviews with Sayre's coworkers confirmed her conduct and treatment of them was disrespectful and violated the VECO HR Policy against rude, discourteous

or improper treatment of colleagues or clients. Some felt her conduct was demeaning.

The report concluded that

There was a chilling effect observed during the conduct of the investigation. Many of Sayre's coworkers said they were afraid to disagree with Sayre or bring concerns about her work for fear of her accusing them of harassment or retaliation or being sued or belittled. (JX 52).

On January 12, 2000, the Complainant sent an e-mail to Sandra Dillon, a U. S. Department of Interior employee. (See TR 826). This stated, in part

I haven't heard from you regarding my October 1999 complaint against VECO and Alyeska Pipeline for on going retaliation for my participation in a protected activity.

I had thought about your statement that you couldn't find there was a prima facie case on this complaint. I simply can't understand how you could possibly come to that conclusion. VECO specifically hired their purported "outside" third party investigator - Bob Hanson, to investigate the alleged hostile work environment they claimed I created.

This is clearly red flag in that they have never done this before to any of their employees. Easily, this action would be identified as discriminatory treatment toward a whistleblower. This obviously begs the question why wasn't this handled in-house with VECO's own HR department? Why was I, a whistleblower, treated differently? Why does VECO continue to retaliate against me by taking actions they have never subjected any other employee to? (VX 51).

In a January 20, 2000 e-mail to Dillon, Sayre stated

I am truly sorry you didn't see things the way others see the retaliation I am subjected to. I really wished you would have contacted my witnesses to prove to you, beyond any doubt, that VECO managers, like Jodee Johnson, lie and retaliate on a regular basis. There is a pattern and has been a pattern established

for individuals like myself, who tell the truth. (AX 141).

The Complainant testified that she was trying to inform Dillon that there was a pattern and that she had established a prima facie case. (TR 635).

John Conway, then president of VECO Alaska was present on January 24, 2000 when the Complainant was given a written warning based on a confrontational attitude toward coworkers, failure to follow procedures for tag numbers and revisions of drawings, and making a false accusation regarding an employee's time sheets. Also Sayre did not copy e-mails to Johnson despite such instructions.

A plan of correction was provided and the Complainant was informed that

Failure to show improvement in these areas will result in further disciplinary action up to and including termination.

VECO is committed to helping you work through these issues and are open to discuss means to assist you in these areas.

We also realize that you may feel you need a different work environment and are willing to discuss with you the possibility of transferring to Anchorage.

Finally, this written warning is not meant to discourage you from reporting quality, safety, environmental or ethical issues that affect the Company or client operations. Indeed, we expect you to report such concerns. (JX 22).

As initially stated in this decision, Sayre filed a complaint with DOL in October 1999 and the Regional Administrator denied the complaint in January 2000. The Complainant appealed and the case was forwarded to OALJ.

In the complaint filed on February 15, 2000 with DOL, the Complainant stated in essence that the October/November 1999

investigation was a complete one sided farce and simply more retaliation against me for having engaged in a protected activity.

I still, to this day, continue to be subjected to blatant hostility, gross humiliation, upper managements' continuous intimidation, & openly obsessive retaliation by VECO since the October 1998, DOL Hearing.

In April 2000, the Regional Administrator essentially merged the February 2000 complaint into the October 1999 complaint as the earlier complaint was currently on appeal.

The Complainant testified that the letter of reprimand in January 2000 was retaliatory as she was not given an initial verbal warning. She also questioned why the president of the company would fly from Anchorage to Fairbanks to personally deliver the letter. (TR 415). She felt that she was being treated differently than any other employee.

VECO's counsel the referred the Complainant to page 43 or 0111 of VX 12, the VECO Alaska, Inc. Employees Guide to Policies and Procedures. It was noted that a formal written warning could be issued as the first disciplinary step.

Counsel asked

Q In the meeting with Mr. Conway in January of 2000, when he gave you the first warning letter, did he offer to discuss with you transferring to another job site?

A No. His response, I believe, was something to the effect that, "Maybe you should be relocated at Anchorage," and I believe my response was, "I like my two weeks on and two weeks off schedule, and why should I be the one punished here, when I don't feel that I've done anything?"

Q Well, there's a difference between him involuntarily transferring you to Anchorage, and having a discussion with you about whether you would prefer to move to Anchorage, isn't there?

A Yes. (TR 417).

The North Pole Metering Station (NPMS) is located on the pipeline south of Fairbanks. This facility measures the flow of crude oil from the pipeline to refineries in Fairbanks as well as the return of fluids to the pipeline.

On March 24, 2000, a meeting was held in Fairbanks to discuss the NPMS. Prior to the meeting, Jim Giles, an asset manager, had sent Sayre and Rob Merdes to the station to prepare a deficiency list. Giles asked the Complainant to chair the meeting as she was the most familiar with the deficiencies.

At this meeting, the Complainant volunteered to find out if professional engineer (PE) stamps were required on the Smith (builder) prints but Johnson told her to merely follow procedures. However, Sayre had previously contacted the state board of engineering and knew that the stamps were required.

The Complainant wanted to contact the City of North Pole to see if mechanical or electrical inspections were required. She was informed that this matter should be referred to Alyeska technical standards. The Complainant reported that she would contact the city.

Sayre also mentioned that an air intake unit was located near pipes which, if leaking, could cause hazardous vapors to enter the NPMS. She felt that this was in violation of the code. (TR 221) (see SX 72). During the next two weeks, numerous e-mails were sent on this subject. (SX 57, 58 & 59).

The Complainant acknowledged that the consensus at the meeting was to have the technical standards group decide the issue of whether or not the Smith prints (by a Texas company) needed an Alaska professional engineer stamp. However, in her notes, she assigned this responsibility to herself. Sayre was going to contact the state board of engineering. It was better to have the answer in writing as the technical standards group had made errors before. (TR 420-429).

The group consensus was that permits were not needed as the NPMS was outside the City of Fairbanks. The group felt that there was no need to follow up. Sayre decided to research this point as the facility was located in North Pole. While she had previously spoken to North Pole officials, she had nothing in writing to confirm the necessity for permits. (TR 434).

There was a discussion at the meeting regarding the relocation of smoke detectors from the first floor to the second floor. The Complainant felt that the plan should be resubmitted to the state fire marshal but the group decided to refer the matter to the technical standards group. The Complainant had contacted the state fire marshal but had nothing in writing to confirm her position. This was not disclosed at the meeting.

A project deficiencies list pertaining to the meeting on March 24, 2000 is in AX 153. Under "EMT in ALY process facility?" is listed "Research-J. Sayre." Under "City inspection needs to sign off and approve permit" is listed "Research-J. Sayre."

The Complainant sent Rob Sanabria, her alternate, turnover notes for the period from March 15, 2000 through March 28, 2000. (SX 31, SX 159). This included on pages 576 and 577

- 1.23 Went to the NPM Document and drawing deficiency Turnover package meeting. There was quite a crowd. We began to go over each item in the list and assign the proper contractor to resolve the issues. It appears as if most of the problems with the facility deal with the Smith drawing redlines never having been sent to the facility. I have still never seen any Smith redlines. As far as your request in item number 3.6 of your turnover notes, unfortunately, in order to be in compliance with the Quality Program, there needs to be an immediate as built walkdown and redlines to the associated Mechanical drawings. Most all other work stems from this Mechanical P&D re-as-built. Tags and documentation identifications are the other terribly deficient issue surrounding this facility closely followed by the close out records. There appear to be code violations and I suggest that there be additional inspections people enlisted to identify and disposition the NRC's to be written. I identified a very significant mechanical code violation and got very negative feedback from several meeting members. I didn't care for the negative remarks, it only shows a lack of cooperation & denial on the part of the person(s) involved in the project. Which then opens up many more additional items of concerns. Subsequently, I will have reservations about identifying in the future.

Bottom line is we have an enormous amount of work that lies ahead and what we primarily need the most is complete joint cooperation and very complete & specific communications to/for all individuals involved. I have

strongly suggested that the Field Designers From this asset get more involved and perform most of the work relative to this facility. This way, we know the skill level of those persons as-building and there is a certain amount of ownership and accountability in the work performed. I have a few items I have volunteered to research and find our the answers to. I have distributed a meeting minutes for the issues I brought up and the contractor who will work the issues. This is a revision 'A' draft which I intend to incorporate into a .xls spreadsheet to track the work as it is completed and accepted by the Asset Leaders, the NPM Techs, the Facility Engineers and of course the Asset Field Designers. Please don't hesitate to call me at home and keep me informed of any changes to this plan of action. We need to stay on top of this closeout and not end up in the same circumstances as we are in now. (3/24).

These notes were also required to be sent to the pump station ATLS, Jim Giles and Rob Merdes.

Atkinson completed a second report in late May 2000. He stated that

In March/April of this year, a complaint was brought against Jeanne Sayre alleging that she created a hostile work environment through her behavior in and around a March 24 meeting regarding the North Pole Metering Station project. On April 14, Lynn Palazzotto requested my services to investigate the validity of this complaint.

From April 17 to May 8, I interviewed a total of six witnesses in addition to Jeanne Sayre

These included Jim Giles, Rob Merdes, Charley Lee, Randy Redmond (VECO project engineer), Jodee Johnson, and David Walters.

March 15, 17, 19, 21, 23

Per her 3/15-28 turnover notes, Jeanne Sayre spends substantial time on-site at NPMS to identify

documentation deficiencies, and to prepare for the March 24 Turnover Package Meeting,

The purpose of the meeting is to determine and agree the remaining work that must be completed before PS 07 will accept turnover of the NPM project to them. Witnesses state that Rob Merdes and Jim Giles chaired the meeting and that Ms. Sayre's role was to take notes. Ms. Sayre states that she chaired the meeting.

Multiple witnesses portray Ms. Sayre's behavior in that meeting as less than fully cooperative. Words used vary from "she did not take no for an answer", to "accusatory", to "pushy and demanding". Indeed, Ms. Sayre herself indicates that she was uncooperative. She states that, although meeting attendees consensually assigned follow-up actions, she refused to abide by that agreement and instead assigned them to herself.

During the meeting, there were extensive discussion of PE stamps, city permitting, and fire prevention redlines.

Multiple witnesses state that these assignments were clear, and that PM200I was cited for understanding of proper procedure to follow. Multiple witnesses also state that Jodee Johnson had clearly requested that such interpretation issues be resolved by everyone doing their own and by "working through the chain".

When the above actions were assigned in the meeting, Ms. Sayre evidently did not propose that she work any of them herself, nor did she volunteer to work them in conjunction with others. Indeed, two witnesses characterize Ms. Sayre as "avoiding" taking action items.

Following the close of the meeting, Rob Merdes asked Ms. Sayre to assemble the notes from the meeting onto one punch list.

On March 26, the Complainant distributed meeting notes to attendees as well as Sanabria. Giles asked Johnson for corrections, and on March 28 Johnson sent detailed corrections to Sayre. On that date, the Complainant issued her turnover notes, and a copy was forwarded to Randy Redmond.

An employee concern was filed with Alyeska. Redmond, Johnson, and Walters indicated that the description of the March 24 meeting, as reported in the turnover notes, was false and misleading. They also objected to Sayre's characterization of the NPM project team members.

In addition to Randy Redmond, both Jodee Johnson and Dave Walters state that Ms. Sayre's turnover notes falsely indicate that project personnel were not working the problems and that only Ms. Sayre is trustworthy, credible or competent (e.g. see paragraph 1.2 of March 15-28 Turnover Notes).

April 13, 2000

Ms. Sayre replies to JoDee Johnson's corrections to the March 24 meeting notes, and copies the other meeting attendees as well as Scott Hicks, Steve Tait, Ron Robinson, Lori Howard, Dave Yunker, and Rob Sanabria (See Attachment E: J. Sayre E-Mail)

- Regarding the PE stamp issue: Ms. Sayre refuses the correction and request made by Jodee Johnson. Instead she states that "I volunteered to make contact with the agency governing the practices of engineering in Alaska", and "I will be happy to share with you the information I receive from the Board of Engineering".
- Regarding the city permitting issue: Ms Sayre does not agree to the issue being closed, but instead states "I wanted to make sure all the bases were covered to insure there were no additional permit requirements from the borough or any other entity".
- Regarding the fire prevention redlines issue: Ms. Sayre disagrees with Jodee Johnson's interpretation of the requirement. As basis for disagreement she states that "I [have reviewed] this with the Assistant Fire Marshall and he concurred with what I stated....". However, Joe Weger, the Assistant Fire Marshall, does not recall discussing this with Ms Sayre, or recall ever talking with Ms. Sayre, although he does specifically remember discussing NPMS with Henry Kim and other TAPS employees.

- Regarding approval of plans: Again, Ms. Sayre does not agree with Jodee Johnson's correction, and avoids the issue of approval authority, instead she argues that employees at the facility need to be involved.

Atkinson found that

Ms. Sayre's behavior in and around the March 24 meeting demonstrates an inability or unwillingness to constructively interface with other employees or departments within VECO or the broader TAPS organization to reach resolution on normal issues that arise in the course of the work. Witnesses experienced Ms. Sayre as uncooperative in the meeting. And, instead of openly discussing her preference to be involved in follow-up activities, she chose to subvert the collaborative meeting process and simply usurp roles given to others. Indeed, Rob Merdes, an important client manager to VECO, states he interprets Ms. Sayre's behavior as saying "I don't like the answer agreed at the meeting, and I am going to check it out myself". Merdes states that this incident is representative of Ms. Sayre's behavior of checking and elevating concerns to the point that: "You can never bring anything to closure....ironically you are then accused by Jeannie of inaction because you are held up waiting on so many other's decisions or opinions."

Multiple witnesses state that they found Ms. Sayre's communication inflammatory. For instance, her repeated use of words such as 'violation' when referring to a project that is not yet handed over; or her questioning in her turnover notes: "I am not sure why these issues weren't being addressed over the course of the last 18 plus months...". Merdes states that her behavior and communication send the message to colleagues that "I don't believe or trust you" and that that message undermines healthy working relationships. His assessment seems borne out in that neither Randy Redmond nor Greg Campbell had previous experience with Ms Sayre before the March 24 meeting, yet came away from that encounter with serious concerns about her behavior.

Atkinson held that

Violation of Human Resources Policy: Inappropriate Conduct
VECO HR Policy for employee conduct prohibits "Rude, discourteous or improper treatment of colleagues or clients." Multiple witnesses state that the comments that Jeanne Sayre included in her March 15-28 turnover notes were rude and discourteous and that she made malicious and misleading statements about NPM Project team members. Randy Redmond feels that these comments

impugn his and the NPM project team's professional reputation within VECO and the client organization, and have caused management challenges and morale problems within the project.

Violation of Human Resources Policy: Falsification of Work Records

VECO HR Policy for disciplinary action lists "Falsification of work records" as an example of behavior that is an especially serious violation of policy. All witnesses state that Ms. Sayre's meeting notes are a misrepresentation of the assignments made at the meeting. Furthermore, in Ms. Sayre's interview, she seems to acknowledge awareness that action items were not assigned to her. In addition, witnesses stated that her characterization of the March 24 meeting in paragraph 1.23 of her turnover notes is a fabrication.

Violation of Human Resources Policy: Failure to Comply With Procedures

VECO HR Policy for disciplinary action lists "Failure to comply with Company or client policies or procedures as an example of behavior that may result in disciplinary action. Jodee Johnson and David Walters state that Ms. Sayre has violated procedures, including the following:

- In usurping task assignments, she may have also violated the procedure in the PM2001 project close-out section outlining the roles of the Project Engineer and Project Manager in project closeout.
- If she went directly to the Assistant State Fire Marshall or the State Board of Engineering for interpretation of requirements as she indicates in her e-mails, she may have violated the procedure in PM2001 Section 2 regarding the role of the Engineering Standards organization in interpreting requirements.

Violation of Human Resources Policy: Insubordination

There appears to be confusion within TAPS as to whether a supervisor can validly bar an employee from contacting an outside agency. For instance, is it valid to bar contact made for purposes of interpreting regulations (versus reporting a violation) or made as a company representative (versus a private citizen)? I believe that this is an important point for

clarification. As Dave Walters stated, it is important to have one official point for interpretation of regulations, otherwise it is easy to generate multiple interpretations within TAPS, leading to ambiguity, conflict, confusion, rework and inaction.

Validity of the request aside, it appears that by her own account, Ms. Sayre refused a direct request of her supervisor. Witnesses state that in the March 24 meeting, and again in her March 28 correction e-mail, Jodee Johnson clearly requested that Ms. Sayre (or others) not contact outside agencies, but follow proper channels to resolve issues regarding interpretation of requirements. In her April 13 rebuttal to Jodee Johnson's correction e-mail, Ms. Sayre indicates that she contacted the Assistant State Fire Marshall regarding interpretation of requirements concerning fire prevention redlines. Also, Ms. Sayre's meeting notes indicate her intention to contact the State Board of Engineering. When Jodee Johnson again specifically requested her not to, Ms. Sayre essentially replied that she is going to do it anyway. However as mentioned above, it is unclear whether these contacts were indeed made: as Ms. Sayre's claim that she contacted the Assistant State Fire Marshall is unsupported by him. (JX 23).

On May 31, 2000, the Complainant received a confidential written warning from John Conway and she signed this under protest. This stated, in part

I. Description of Issue (be specific):

Some of your co-workers made a complaint that you created a hostile work environment through your behavior at and after a meeting for the North Pole Metering Station project held on March 24, 2000. VECO hired Bob Atkinson, an independent consultant, to conduct an unbiased investigation.

Mr. Atkinson interviewed you and six other persons present at the March 24th meeting. Additionally, Mr. Atkinson contacted Joe Weger, Assistant State Fire Marshall.

Mr. Atkinson reached the following conclusions. At the March 24th meeting, there was extensive discussion on three issues: (1) whether PE stamps are required on prints submitted by Smith Systems; (2) whether the City of Fairbanks' sign-off and approval of a permit is required; and (3) what approval and documentation are required on redlines involving fire protection. The assignment of the follow-up actions to be taken on these issues was made clear and the procedure for resolving these issues was established. You did not volunteer to work on any of these issues, nor were you assigned any of these tasks.

Nevertheless, you chose to look into some of these issues on your own in flagrant disregard for the process established at the meeting.

Mr Atkinson concluded that you failed to follow VECO and client procedures. Specifically, your usurpation of tasks assigned to other persons violated the PM2001 project close-out section that outlines the roles of Project Engineer and Project Manager. Likewise, your allegation that you contacted the Assistant State Fire Marshall or the State Board of Engineering for Interpretation of requirements may have violated the procedure in PM2001 regarding the role of the Engineering Standards organization in Interpreting requirements.

Your refusal to abide by the task assignments made at the March 24, 2000 meeting makes it more difficult to resolve the issues under discussion. It is important to have one official point of contact for interpretation of regulations. Otherwise, it is easy to generate multiple interpretations within TAPS, leading to ambiguity, conflict, confusion, rework and eventually inaction.

Mr. Atkinson's investigation also shows that you misrepresented what took place during the March 24th meeting in the meeting notes you prepared and your March 2000 turnover notes. The witnesses almost uniformly agreed that your notes of the March 24, 2000 meeting did not accurately reflect what occurred, in that you provided your personal opinion on the follow-up actions that should be taken, rather than simply recording the assignments that had been agreed upon at the meeting. You also assigned yourself tasks that had been assigned to other persons and for which you had not volunteered at the meeting. Likewise, many of the witnesses found the description in your turnover notes of the March 2000 meeting to be inflammatory and inaccurate or misleading. Your notes mischaracterize other members of the NPM team as uncooperative, falsely indicate that the project personnel were not working the problems discussed at the meeting, and implied that only you were trustworthy, credible or competent to deal with these issues.

Based upon Mr. Atkinson's investigation, we have reached the following conclusions:

- 1) You continue to refuse to work cooperatively with your co-workers, colleagues, and supervisor;
- 2) You did not accurately report what took place at the March 24, 2000 meeting; and

- 3) You have failed to comply with VECO and Alyeska procedures for resolving the issues addressed at the March 24th meeting.

II. Plan of Correction

On January 24, 2000, you were given written warning after an independent investigation had been conducted in response to a similar complaint by your co-workers. You were warned that you would be subject to further disciplinary action if you continued: to exhibit an inability or unwillingness to cooperate with your co-workers; to be rude and discourteous to your coworkers; to refuse to follow procedures; and to disobey the directions of your supervisor. This most recent complaint by your co-workers and the conclusions of the resulting investigation show that you continue to exhibit problems in some of these areas.

We expect you to immediately cease engaging in this type of conduct and do the following as instructed in the January 24, 2000 warning letter:

- 1) Cooperate with everyone you work with, including colleagues, clients, co-workers and supervisors. Work with them to reach mutually agreeable solutions to problems. Show willingness to compromise rather than insisting that your way is the only way.
- 2) Be courteous, professional and civil in communications and meetings with colleagues, co-workers, clients and supervisors. Give consideration to how comments will be perceived by others before you speak, send e-mails, or draft meeting notes. Refrain from making comments that insult or demean the people with whom you work.
- 3) Follow established and agreed upon procedures. rather than taking it upon yourself to decide how best to resolve an issue.
- 4) Follow the instructions of your supervisor.

This is your second warning regarding related performance issues. You are being suspended, without pay, for two weeks. The specific dates of suspension are from June 6, 2000 through June 20, 2000. If you engage in similar behavior in the future, you will be subject to further disciplinary action, including the possibility that your employment will be terminated.

Please Note: This warning becomes part of the employee's official personnel file. Continued unsatisfactory job performance or non-compliance could lead to further disciplinary action, which may include discharge. Signing of this form is acknowledgment of the warning. (JX 34).

VECO's counsel asked the Complainant

Q And is it your view that you got a warning letter and a suspension because you were raising safety and quality concerns?

A Yes.

Q Okay. So, sitting here today, you don't think that the reason you got that warning letter was because of your behavior at the meeting and your assigning responsibilities to yourself which were not assigned to you?

A I don't think that my behavior at that meeting was inappropriate.

Q And you don't think your minutes concerning the meeting was inappropriate either, do you?

A No, I was just letting these individuals know that I was going to make contact.

Q So, there was -- there was really no basis whatsoever for that warning letter that was issued to you on May 31st, 2000?

A I didn't believe so. (TR 443).

The Complainant felt that she was being disciplined for raising safety and quality concerns as the second report by Atkinson concluded that you failed to follow VECO and client procedures. Specifically, your usurpation of tasks assigned to other persons violated the PM 2001 project close-out section that outlines the roles of the Project Engineer and Project Manager. Likewise, your allegation that you contacted the Assistant State Fire Marshall or the State Board of Engineering for interpretation of requirements may have violated the procedure in PM 2001 regarding the role of engineering standards, organization, and interpreting these requirements."

The Complainant testified that I believe that I was within all of my rights to go to those two different agencies or any agency as a private citizen to ask any question. (TR 445 & 446).

About the time of receipt of the Conway warning, the Complainant sent e-mails to numerous individuals including Sylvia Baca, a Department of the Interior employee. The e-mail to Baca stated, in part

A few months ago, I had written a note to you requesting that something be done regarding the open retaliation against whistleblowers on the Trans-Alaskan Pipeline or TAPS. I realize you are a very busy person, but it is my understanding that you have met with Bob Malone, of Alyeska Pipeline Services Company, and you have been deliberately misled into believing the integrity of Pipeline is safe. It is evident that Mr. Malone is paid by the oil companies to tell you these mistruths. The oil companies desperately want to renew the lease on the Right of Way this year and before the November elections, and will tell you exactly what you want to hear.

I think it is time for someone to investigate the Alyeska North Pole Metering Facility located in North Pole, Alaska. The individuals at the Joint Pipeline Office are completely inept at reviewing code violations and non-compliance to state and federal regulations. The JPO does exactly what Alyeska instructs them to do - no more and no less.

Recently, a woman came forward to two members of the JPO and relayed to these individuals, substantiated HIRD attacks by VECO Management against this woman and several others. VECO is the company who has been awarded the exclusive engineering contract for the Pipeline. It is my understanding these two individuals were chastized for listening to the HIRD issues.

If VECO does not discontinue the retaliation, and Alyeska does nothing to stop the retaliation and harassment of Whistleblowers. And now the JPO instructs their employees to "stay out of contractor HIRD issues" then where may I ask, should these concerned TAPS workers go to have their valid safety and environmental issues addressed in a suitable, professional, confidential manner?

Time and time again, this VECO has violated state and federal laws while engineering the construction projects for Alyeska. There are hundreds of documented cases of the Quality Program requirements being completely ignored and omitted from the work.

I am the person who was tasked to review the North Pole Metering Project. #B176.

During this review process, I found approx 100+ single line deficiencies within the Project turnover package. These were published on March 24, 2000, and with many people denying the deficiencies and code violations. Because I performed a thorough and itemized punchlist of noncompliance issues, my employer - VECO ordered me to be "investigated" and I have been ordered to attend a meeting tomorrow, which I feel will jeopardize my current job at Pump Station #7. (SX 72, contained in the September 2000 Joint Pipeline Office Analysis of the NPMS.)

The suspension was scheduled for early June but was served from mid-June to early July 2000.

Based on the allegations of more than 100 deficiencies at NPMS, the JPO conducted an investigation. The report stated that

The investigation team found the initial NPM Project B176 Deficiency List quantifying 127 items to be lacking in sufficient detail, not linked to Codes, Regulations, or Specifications and inconsistently scoped. Not only were many "items" on the list redundant entries, several were non-specific with no basis of deficiency. The lack of detail and failure to link requirements to issues increases the risk of not effectively resolving valid "deficiencies." The investigation team determined the quality of the initial NPM Project B176 Deficiency List to be inadequate and not compliant with Alyeska's Quality Program Principal Implementing Procedure (PIP) 3.9, Revision 2, Design Development, Control and implementation. In an effort to attain specificity into the allegations, the investigation team logged many verbal requests to Alyeska for a revised list incorporating more detail and linkages to requirements.

6.0 Observations

6.1 There is not agreement on the status of Project B176. The investigation team queried several individuals involved with this project as to the "turn-over" or "closeout" status of B176 and received varied responses. The spectrum of responses ranged from "closed out" because the new NPMS had been "operating" for more than a year, to the "official response" of "heading towards turnover." Others described certain features of the facility as "temporary." Some of the "temporary" features of this project

have been key to the operation of this facility for more than a year, e.g. umbilical cabling between the Daniels Control System (old facility) and the Smith Control System (new facility). Many valves within the new facility were found to have "temporary" paper identification tags in lieu of permanent identification tags with associated as-built drawings after a year of operation. What ever term or phrase is determined to be official or correct, Alyeska must consider this facility an operating facility and have reasonable assurance that system integrity, worker safety, and the environment are not compromised.

Numerous recommendations were made to Alyeska.

On September 14, 2000, the U. S. Department of Transportation, Office of Pipeline Safety, proposed civil money penalties regarding the NPMS for inadequacy of maps and records, exceeding pressure limits for the pipeline, and inadequate security fences. (SX 72).

In July 2000, the Complainant met with Dennis LeBlanc, an Alyeska vice president in charge of internal audits, and Judy McCormick at NPMS. In early August, LeBlanc sent e-mails to thank Sayre for her assistance. (SX 62 & 63) (TR 234).

In late 2000, the Complainant sent several e-mails to Scott Hicks, the Alyeska project manager, regarding problems in the project. (SX 122-124). E-mails were also sent to McCormick and Charlie Lee and to the JPO.

During September and October 2000, the Complainant had frequent contact with Karen Allen, an As Built Coordinator for VECO. The Complainant sent a "terse" e-mail on October 31, 2000. (JX 35, p.0930).

VECO's counsel asked

Q Did you ever just pick up the telephone and call Karen Allen, and explain to her, like you did this morning, what -- what your concern was?

A I may or may not have tried to call her. I didn't make a connection with her.

Q You never connected with her?

A No.

Q All right. Did you ever send her an e-mail and say, "I really would like to discuss this with you. Can we pick a time to get on the phone and talk through this issue?"

A I could have said that, yes, looking back in retrospect.

Q But you didn't do that, did you?

A No. I thought I was very -- I communicated quite well in what I had written to her in that -- on that one cover sheet dated 9/10/99, I believe it was, where the EDAC report for Area 4500 was not part of our Asset, and then it just seemed to snowball into more problems every time that that package was returned back to the pump station.

Q Did you think that Karen Allen was out to get you at this point?

A I was nervous about it, yes.

Q All right. So, did you think she was deliberately assigning errors to you, which shouldn't have been assigned to you?

A Based on what I had seen in that package and based on the EDAC report where my name was associated with those drawings and the errors, yes.

Q Had -- but had Karen Allen done anything to you before this time to retaliate against you?

A No, I don't believe so.

Q She was not one of the people who had ever done anything to retaliate against you. Correct?

A Correct. (TR 456 & 457).

On October 9, 2000, the Complainant sent an e-mail to Pat Lee, and this stated

It has been reported to me that Mr. Walters has again been spreading unfounded rumors about me throughout the VECO FBU office. I would like this to be investigated and resolved, immediately. This is the third time

David has made completely untruthful statements about my character & work situation.

I do not feel comfortable providing you names of the individuals who report these issues to me because of the 'closed work environment' clearly present at VECO. However, I believe if you would simply question all those individuals who participated in the October 4, 2000 design/drafting meeting held at 1:00PM at the DIF office, you would find out about his latest false statement concerning me.

I was told by several individuals that Mr. Walters has been warned at other times about his inappropriate behavior regarding idle office gossip and degrading rumors. It appears that he has chosen me for his latest target and not only is it offensive to me but I found others have become disgusted with his behaviors.

Would you be able to look into this and please put a stop to his harassment and retaliation against me. Pat, I appreciate your time and action in immediately resolving this matter. Thank you. (JX 35).

The Complainant testified that a "PK" told her about the meeting but she did not mention PK to investigators in order to protect that person. (TR 461). Sayre stated that Keith Nuss, Mike Chafee, and Deral Wise might have heard these rumors.

VECO's counsel asked

Q Now, I want to be sure I've gotten a clear understanding of what the rumors are that are being spread by Dave Walters. One of them was that you had sued VECO, gotten a lot of money, agreed to quit, and then didn't quit. Is that right?

Q Didn't quit and kept the money.

A Didn't quit and kept the money. All right. And was one of the rumors that at the design meeting on October 4th, that you said that you were being pulled out of Pump Station 7 and replaced with a document specialist?

A Yes. That was the rumor that triggered this letter, but the other rumors -- I think that one

of them was in shoot. I can't even think of what year it was, but he had -- I think it was Patty Lowdermilk who told me that he was saying that I would sue people or raise ECP concerns if you disagreed with me. (TR 462).

There was a discussion of Lowdermilk's October 2, 2000 e-mail where it was stated that one of the rumors is that PS7 was only going to have admin aides to take care of filing the drawings. (JX 63). Sayre acknowledged that Lowdermilk did not confirm the other rumors in her subsequent interview with Atkinson. (JX 44). However, Sayre stated that Lowdermilk had implied to her that Sayre was the only designer to be removed from a station.

On October 23, 2000, David Walters sent an e-mail to Lynn Palazzotto and stated

I'm not sure what is going on right now. I was asked a couple of weeks ago, what comments I made about Jeannie Sayre in our designer/drafter meeting.

To my knowledge, nothing was said about her. All my comments had to do with designers in general working in the field. I truly don't remember saying anything about Jeannie.

And yet Jeannie is persisting to stir things up and create a hostile work environment for me by accusing me of spreading rumors about her in our design/ drafter meeting.

I have had all I wish to put up with, and would appreciate it if you could check into these allegations of hers. I am tired of being a target of her continual harassment.

Her harassment is affecting everyone and not just myself. Because of her allegations, people in the office have to spend time being interviewed by Mr. Rechenthin (Johnson's successor) and several (others) have confided in me and asked me if they were being named in another ECP or lawsuit by Jeannie. What is happening, from my perspective, is the work at PS 7 will be slowed down. No one wants to deal with Jeannie, so in the past they have dealt with Rob Sanabria. Well, now that he is gone, people tell me that they don't want to speak with Jeannie for fear of

repercussions and fear of becoming one of her targets. Therefore, the work gets put off at PS 7 until individuals can do their own work and not have to use Jeannie for field verifications and such. This causes delays and additional cost to the client.

Bottom line is that everyone is afraid of her and what she might do to them, so they try to have nothing to do with her.

I know that even that doesn't help. I have tried to be extremely careful and not offend her in any way and yet I am again under the spotlight and living with the fear of another lawsuit.

Any help you can give would be greatly appreciated. (JX 35, p.0927).

On October 31, 2000, the Complainant sent an e-mail to Scott Hicks, Alyeska project manager, and to other Alyeska employees regarding equipment tags at NPMS. (JX 35, p. 0934).

Sayre acknowledged that she did not inform VECO employees of these problems. (TR 477). She subsequently learned that some VECO employees were working on this problem. In retrospect, she acknowledged that she should have sent e-mail copies to VECO coworkers.

The Complainant stated that it was common for field designers for VECO, such as Sanabria and herself, to send punch lists of errors to Alyeska facility engineers such as Charlie Lee, Dan Jensen, or Steve Tait. (TR 486).

On November 7, 2000, Hicks forwarded a Sayre e-mail to VECO employees, David Rechenthin (Jodee Johnson's replacement), Randy Redmond, David Walters, and Gregory Campbell. Later that day, Redmond sent an e-mail to the Complainant and stated

Jeanne, in the future, please contact the responsible engineer, project engineer for issues relating to this project regarding Safety issues, particularly when those issues effect design related activities.

Additionally, Dave Walters has provided me with a memorandum which addresses the issues raised, see attached. My understanding is that the APSC Departments Leads for Tag related issues, Operations

Personnel for the facility, and the Project Design group had come to terms and agreement on the documentation requirements for the electrical and hvac equipment identified within your note. New drawings were prepared and distributed to the effected facilities based on the agreed upon tag #s approximately 2-3 weeks ago. Please verify that you are reviewing the current dwg set. (VX 95).

VECO's counsel asked

Q So, he's telling you that in fact someone had been addressing this issue that you raised. Right?

A Yes, but that second paragraph was a red flag that was raised because the key players in this whole tag change issue were not notified either on this e-mail or any of the other subsequent e-mails. In other words, Dave Walters, to the best of my knowledge, had never notified Jim Giles, or Rob Merdes, or the two Facility Engineers that they had changed the tag numbers. Randy Redmond had not notified the two ATLs at Pump Station 7 or the two Facility Engineers that they were changing the tag numbers.

... Again, Alyeska requires that you go through this process to complete a paper trail as to why the tag numbers were changed, how it went about, whose approval signatures were on it, how was the funding delivered, where are the redlines, where are the approval to the redlines, and the list goes on and on and on. And, again, these are items that they got hammered on in the audit, back during the '93 audit with the General Accounting Office. They could not provide paper trails for these changes.

Q The first sentence of this e-mail says, "Jeannie, in the future please contact the responsible engineer." Did you think that was an appropriate instruction?

A This was the first time I had ever been instructed on who to contact, other than my e-mails to Scott Hicks where he had stated, "If you have any

concerns contact me, or if you have any questions contact me."

Q But -- but you don't have any problem with what Randy Redmond is telling you here, that you should have contacted him about an issue like this?

A I don't now, no. (TR 489 & 490).

The Complainant stated that Johnson, Walters, and Ebersole had harassed her and retaliated against her. The first two had spread rumors or failed to quash rumors about her. She sought reinstatement to her previous job at PS 7.

VECO's counsel asked

Q Don't you think if you go back to work at Pump Station 7 that this same thing will happen again, that you'll have further conflicts with these co-workers and we'll be right back here before the Department of Labor?

A No, not if everyone agrees to put the past behind them, and that if Alyeska and VECO both convince this group of people, as well as everybody else that works at TAPS, that if you raise concerns you will not be retaliated against if they're raised in good faith. If you raise a concern that somebody's socks stink, I mean, that's frivolous. That I shouldn't be raised, and if you continue to raise concerns like that, yes, maybe you should be orally reprimanded, but if you raise concerns that have to do with the environment or have to do with the integrity of the Pipeline, have to do with an open work environment, or have to do with things that you have been instructed to do, which are completely within the procedures and laws of this State, I don't believe you should be retaliated against.

Q And, Ms. Sayre, sitting here today, you don't agree or don't understand that the reason VECO disciplined and ultimately fired you was not because you raised concern, but was because of your method and manner of interacting with your co-workers. You don't understand that, do you?

A No, because my actions pretty much mirror those of my colleagues out on the Pipeline. In other words, the other Field Designers contacted Alyeska Asset Leaders when they've got problems with the drawings, and they let the Asset Leaders take care of the problems. (TR 494-5).

Atkinson conducted a third investigation and issued a report in late December 2000. It was stated that

On October 9th of this year, a complaint was made to Pat Lee (VECO Human Resources) by Jeanne Sayre alleging that David Walters was harassing her by spreading unfounded rumors about her. Shortly afterward, David Walters filed a complaint against Jeanne Sayre claiming that she is creating a hostile work environment in Fairbanks District. On October 23, Lynn Palazzotto requested my services to investigate the validity of these complaints.

On October 25, I interviewed Jeanne and David's direct supervisor, David Rechenthin. On October 26, I traveled to the Fairbanks District Office and interviewed six witnesses, on November 27 interviewed one more, and then on December 20 Jeanne Sayre and an additional witness (see Attachment A: Interview and Contact List). Witness interviews were conducted in person in the Fairbanks office, and also conducted via the telephone. Witness interview notes were typed and will be e-mailed to each witness for their approval and forwarding to Lynn Palazzotto.

GENERAL OBSERVATIONS

Jeanne Sayre's complaint that David Walters spread "untruthful statements about [her] character and work situation" appear to be unfounded. All of the witnesses present when the alleged behavior took place indicate that Ms. Sayre was not singled out, nor were any derogatory remarks made about her. Moreover, the individual that admits to passing the information on to Ms. Sayre states that she did not characterize Mr. Walters as targeting or disparaging Ms. Sayre.

Secondly, there is evidence that David Walters' claim that Ms. Sayre is creating a hostile work environment has some merit. Indeed Ms. Sayre displays performance and conduct issues that may need to be

addressed by VECO management. I have outlined these issues below.

Performance issue: Effectively Working issues and Solving Problems with Colleagues

The Field Designer position is at the nexus of predictable conflict within TAPS. For this reason it would seem critical to VECO's mission that Field Designers be individuals who do not create or perpetuate conflict, but rather are adept at constructively managing conflict that arises. Indeed, the position description for Ms. Sayre's position (Senior Designer) states that:

1. An "essential function" of this position is to "Interface[s] with other departments, clients, vendors and discipline engineers in order to support project";
1. That "Preferred Education, Experience and Skills" include. "Strong written, verbal, analytical and interpersonal skills".

Ms. Sayre's behavior, as seen in her complaint against Mr. Walters, miscommunication with Karen Allen and handling of the revised tag numbers at NPMS, demonstrates an inability or unwillingness to constructively interface with others within VECO to reach resolution on issues that arise in the course of the work. In each of the three instances cited above, one would expect that a reasonable person with strong interpersonal skills would attempt to reason through the problem by initiating a discussion with the party in question and then, if unsuccessful, initiate a discussion with their management. In each case, Ms. Sayre chose a different course that either perpetuated or initiated wider conflict within the organization.

Conduct/Policy Issue: Addressing Problems With Your Supervisor

VECO Alaska's Expectations For An Open Work Environment states the following as an expectation of all employees: "if you have a problem, be it safety related or otherwise, first address it through your supervisor. If, for any reason, you cannot use your supervisor, work to resolve your concern directly through another member of management, or through your

human resources representative." In the case of the Heating and Ventilation tag numbers at North Pole Metering Station, Ms. Sayre did not do this. Instead, she sent a note to eight APSC client personnel without even copying her own management. As a result, her own organization was blind sided and had no opportunity to address the problem before it became a 'crisis. Ms. Sayre states that she believed that her role was to alert the APSC Project Manager, Scott Hicks. However, it seems that a reasonable person would at least inform their management if they knew that information that they are about to convey will put them in some distress. (35) (See JX 36-45).

On January 18, 2001, Dave Rechenthin, Fairbanks District Manager for VECO, sent a letter to the Complainant and this stated

I have given you a summary of Robert Atkinson's findings from his latest investigation. His investigation shows that you are continuing to engage in the type of conduct that you have been warned about twice. You continue to be divisive, uncooperative, and hostile in dealing with your co-workers. You also continue to bypass normal communication channels.

You give no indication that you have accepted the validity of the previous criticism of your work performance. Nor have you demonstrated a willingness to change your behavior. To the contrary, your behavior continues to be disruptive to the efficiency and effectiveness of our performance. There is not any indication that your behavior is likely to change. Consequently, your employment with VECO has been terminated effective today.

(Atkinson had concluded that "Ms. Sayre falsely accused Mr. Walters of harassing her.") (JX 47).

Complainant's counsel called Sayre's attention to an October 4, 1999 e-mail from Walters to Johnson where he stated, in part

Now to my predicament. I am only the lead for Jeanne and not her supervisor. Jeanne in my opinion) creates a very difficult work situation for me and everyone else she is in contact with, unless you agree with her.

Because of her continuous habit of filing lawsuits and ECP's on anyone and everyone. I don't feel like you or myself can say anything to her without fear of repercussion. None of the people that I lead want to work with her for fear of an ECP being filed on them or a lawsuit. No one wants to communicate with her for fear that she will become upset with our ideas or attitudes and file a lawsuit or ECP on them. The general consensus is to wait until her alternate is on duty and speak with him instead.

It seems that almost everything is confrontational with Jeanne. So to avoid confrontation, we either let her have her way or avoid communication with her.

I feel that her attitude is crippling our work at PS 7.

Please let me know any ideas or suggestions you might have. (JX 49).

The Complainant stated that as of that point in time she had filed one complaint with EEOC for gender discrimination and two DOL complaints. She had also filed about two dozen ECP concerns regarding quality control issues and retaliation. About 90% of these concerns were substantiated.

The Complainant felt that Alyeska should investigate ECP concerns rather than turning matters over to VECO for an investigation by Ebersole's friend Atkinson. (TR 686).

Counsel noted Johnson's October 8, 1999 e-mail to Sayre (JX 4, p. 0684), and counsel asked

Q Do you think VECO should be investigating you because you expressed -- because you went to the Department of Labor and your co-workers were afraid of you because you had gone to the Department of Labor?

A No. I believe VECO should have told their employees that everyone has a right to go to the DOL to raise concerns, and that they shouldn't fear retaliation, that they shouldn't fear that somebody is going to go after them and they're going to be dismissed, fired, or terminated, suspended. I believe that VECO should have

quashed all these rumors that were going around where people feared me.

Q Do you know if they took any action to quash any rumors about you?

A I have no idea, and based on what was provided in discovery, it appears to me they took no action. (TR 705, 706).

Complainant's counsel again mentioned Sayre's meeting with Morgan, Shoaf, and Hall in October 1999. (TR 799). Morgan indicated that Johnson had been directed to retaliate by Ebersole (see TR 121).

Gary Smith

Gary Smith testified that he had degrees in physics and in nuclear engineering and that during 1998 and 1999 he worked for Alyeska. He was the senior investigator in the Fairbank Business Unit. He was assigned to the Alyeska Employee Concerns Program.

In view of his technical background, Smith investigated six or seven of Sayre's ECP concerns. The majority of her concerns were substantiated and he nominated her for an award based on corrections of safety issues.

The Complainant raised issues of retaliation as well as quality and safety concerns. Smith was involved with investigating complaints against Jodee Johnson for the early 1999 turnover meetings - held retaliatory by Judge DiNardi.

Smith had a meeting with Sayre and Johnson and Jodee indicated that she did not want the turnover notes to be confrontational or antagonistic. Smith stated that

I didn't believe there was a communication problem. It was -- it was a dispute. There was -- there was definite conflict between what Jeannie believed and what JoDee wanted to see in turn-over notes. (TR 725).

Smith stated that Johnson asked him for coaching assistance
as

she gave me the impression that she felt very frustrated that she was required to -- to deal with the conflicts between her and Jeannie, and that it was her

responsibility to try to resolve these, and -- and she, in my opinion, didn't have the -- the skills to deal with this type of conflict, and that's one of the reasons she asked for some coaching assistance. (TR 729).

On July 13, 1999, Smith met with Mike Ebersole and Lynn Palazzotto regarding concerns that Sayre had about JoDee Johnson. Smith testified that he asked Ebersole to

answer some questions related to Jeannie Sayre's case, and he said that he would not answer those questions because they were in litigation with Ms. Sayre, and that those questions would have to be sent to the legal department.

During that discussion with Mr. Ebersole, I suggested that -- that the relationship between Ms. Sayre and VECO was broken, and it was probably irreconcilable, and suggested that they look for a remedy or some sort of a solution, a settlement that would -- that would be acceptable to both the parties, and Mr. Ebersole said that he -- he would not entertain that, that they were in fact dealing with that as an internal matter. They -- they had their own plan.

Q Okay. Why did you feel it was irreconcilable?

A Ms. Sayre had been bringing concerns to the Employee Concerns department for -- at least for the two years that I was working in the Concerns Program, and that during that period of time the relationship that she had with VECO had deteriorated to -- to the point where it, in my opinion, it looked as if there was no solution that was being pursued to -- to remedy it, and that I had, in fact, tried to broker several remedies in the past and was at this time suggesting this remedy or some remedy to Mr. Ebersole.

Q Okay. There were no remedies that you could see taking place by VECO or Alyeska?

A No. (TR 738 and 739).

Complainant's counsel asked

Q Were you made aware that employees were complaining that they feared Ms. Sayre because she had filed at -- the Department of Labor complaint or employee concerns?

A Yes, Ma'am. Several people that we interviewed felt that if they -- if they brought forward issues that were contrary to Ms. Sayre's opinion or to her viewpoint, that they might be subject to a -- a complaint or a lawsuit.

Q They might be subject to a complaint, and they were I fearing that she would file a complaint against them?

A Yes, Ma'am. (TR 740).

Counsel called attention to an e-mail on July 14, 1999 to Shoaf and Morgan. This stated, in part

We also discussed the Sayre case. Mike refused to answer questions provided me by Dan Robertson because they are in litigation with Sayre (she has filed a civil action). He said these must be sent to their Legal Dept. I suggested they pursue a settlement with Sayre. It is my opinion that they are in a PICKLE and will never recover a workable relationship with Sayre. A settlement in exchange for her departure from VECO may be best for all. I think they are ready to consider this. (SX 138).

Counsel noted JX 52, the November 1999 ECP investigation of retaliation by Johnson. Smith concluded that the accusations came from co-workers and were forwarded by Dave Walters to JoDee Johnson.

Alyeska's counsel noted Smith's report of the same date regarding concerns brought to ECP by Shoaf after a meeting with Sayre and Morgan on October 14, 1999. (JX 51). Smith had concluded that the issue could not be substantiated due to a lack of documentation. (This pertained to the mandatory turnover meetings with Johnson in 1998).

Counsel noted that in early March 1999, William Biddy sent an e-mail to Malone with copies to Shoaf, Howitt, Monthei, Morgan and Smith. This stated in part

Subject: RAPID RESOLUTION FOR DOL COMPLAINTS FROM

JEANNE SAYRE

Jeanne Sayre is a VECO employee with an ECP Harassment, Intimidation, Retaliation and Discrimination (HIRD) concern against VECO, a recently completed DOL litigation against VECO and Alyeska Pipeline and a new pending DOL complaint against VECO and possibly Alyeska Pipeline.

Jeanne Sayre and I became acquainted through her status as a Concerned individual over the past twelve months and I have found her to be an extremely knowledgeable and dedicated employee with a great deal of courage and integrity. Jeanne has identified a multitude of serious safety concerns, violations of Alyeska's Quality Program and improper employee conduct, the majority of which have been confirmed.

I would like to humbly propose what I believe to be a win/win situation for Jeanne Sayre, Alyeska Pipeline and VECO Engineering before this situation reaches the point of no return as depicted on Billie Gardes Harassment & Intimidation bell curve.

There have been limited conversations between Gary Smith (ECP), Jeanne Sayre, Mike Wellington (Alyeska Fire & Safety), Vicky Coleman (DOL Investigator), JoDee Johnson (FBU VECO Engineering Manager) and myself. No commitments have been extended, but we all see many advantages in such a proposal;

1. Offer Jeanne Sayre some type of financial settlement from Alyeska & VECO to allow her to pay for attorney fees, litigation costs, etc.
2. Offer Jeanne Sayre a full time Alyeska position in the FBU Inspection Services Groups. Emphasize Alyeska's educational reimbursement program and career enhancement job related training benefits.

Supervisor: Chuck Biddy

Mentor: Mike Wellington

Position: Linewide Fire Protection Systems
Inspection Coordinator Based in The FBU

Schedule: Field Position: Two Weeks On/Two Weeks
Off

Monthei responded several days later and indicated, in part, that the budget would not allow such a position. (AX 29).

In late 1999, Smith investigated the Complainant's allegations that the hostile work environment investigation was retaliatory and that Johnson had improperly restricted Sayre's access to the JPO. Smith also investigated allegations of irregularities in drawings. The concerns were not substantiated. (TR 767).

Smith attended meetings where Sayre and Johnson were present and did not find JoDee to be verbally abusive. He described the demeanor as "confrontational but not abusive." Smith felt that the relationship between Johnson and Sayre was irreparable. Sayre could not continue working with her lead, Dave Walters, in a positive way. (TR 770).

Complainant's counsel asked Smith about the cause of the irreparable damage.

For years Ms. Sayre has been having conflicts with VECO over various issues that she's brought up, and she has expressed extreme frustration that nothing ever -- that the concerns that she brought up that were substantiated were -- were not repaired appropriately, or things didn't happen right, and her frustration with the VECO management, in my opinion, made it very difficult and impossible for her to continue a positive relationship with the company. (TR 772).

Smith felt that Johnson had tried but failed to maintain a positive relationship with the Complainant. Ebersole had retaliated as he had ordered the turnover meetings which were found to be retaliatory. Morgan and Shoaf from Alyeska had requested VECO to take corrective action. Smith questioned the thoroughness of Atkinson's third report.

Edward Morgan

Edward Morgan testified that he was currently the Administration Manager for the Fairbanks Business Unit of Alyeska. He came to Alyeska as a contract employee in January 1999 as the manager of the Employee Concerns Program. The ECP was a relief valve for employees outside the normal management chain.

Regarding the turnover meetings Alyeska

found that the requirement for her to attend those meetings was discriminatory. It was in retaliation for her having issues previously, and we also found that the -- just the intrinsic need to attend the meetings were harassing and intimidating. (TR 843).

In May 1999, Morgan wrote to an outside counsel for VECO and stated that actions of Ebersole were improper as

Ebersole indicated the reason for the disparate treatment of Ms. Sayre was due to the fact that she was raising concerns outside her management chain and was not making her management aware of the concerns she had raised. Morgan also stated that such treatment had a chilling effect and was retaliatory. (SX 35).

Morgan signed the November 1999 ECP investigation report. He stated that the conclusions indicated

that the employees who raised the allegations against her did so in good faith, and therefore VECO had an obligation to look into those concerns that had been raised, and that they did so in a manner which was adequate. (TR 847) (See JX 52).

In early November 1999, Morgan met with Shoaf, Howitt, Trotter, and Griffin (Alyeska employees) to discuss Jeanne Sayre issues. (JX 67). Howitt was directed to resolve the issues, and Morgan indicated that he was not satisfied with actions by VECO. Morgan stated it was the function of ECP to present facts and offer choices rather than to make recommendations. (TR 863).

In mid-November 1999, Conway, president of VECO, wrote to Howitt, an Alyeska vice-president, and the letter stated, in part

The actions taken by the employees involved were not their sole decision but based on internal advice and counsel. The intent was never to behave in an inappropriate manner nor harm another employee. However, the methods used were deemed as inappropriate.

All employees involved have had counseling and the attached letter is the documentation of that effort.

As noted in the letter, the employees will attend the Supervisor Training course that we have planned for

this December and January. A copy of the curriculum and course schedule is attached. All key VECO Alaska supervisors will be attending this class. This course is a refresher of HIRD issues, along with a review of VECO policies and procedures. (SX 47).

Morgan reported that he had listened to parts of the tapes from the turnover meetings. While he reported inadequate communication between the parties, he felt that the meetings were mainly reasonable and rational. (TR 876). Alyeska's counsel played part of a February 2, 1999 tape. (AX 27).

During October and November 1999, e-mails were sent by or copied to Morgan, Sayre, Shoaf, Howitt, and Earl Hall. (AX 109). Morgan indicated that Ebersole had left the project prior to October. (TR 892).

On several occasions in the Fall of 1999, Morgan met with Conway, the new president of VECO, to inform him of Sayre's concerns and to attempt to resolve the issues. The turnover meetings had stopped by that time, and Conway was interested in resolving the issues.

Morgan looked at SX 40, a list of concerns raised by the Complainant, and he agreed that the majority of her concerns were substantiated. (TR 908). ECP encouraged workers to resolve issues with their supervisors but about 75% of employee wanted to proceed through ECP.

John Conway

John Conway testified that since April 2000, he had been employed by VECO as the vice-president of construction and major projects. When VECO consolidated the Alaska region, he became president in 1999. Complaints to Alyeska ECP were sometimes referred back to VECO for investigation.

The September 25, 1999 General Manager's Minute addressing open work environment was issued by Conway at the request of Malone, the president of Alyeska. (SX 77). On November 11, 1999, Howitt wrote to Conway and stated, in part

As we discussed earlier this week, my expectations of you and the VECO organization are as follows:

1. Formally review the actions of VECO employees that resulted in the DOL decision against VECO and Alyeska stemming from Jeanne Sayre's complaint of

adverse employment action taken against her for raising safety concerns. Present to Alyeska no later than November 18, 1999, the results of that review and the actions VECO plans to take as a result of the review.

2. Present to Alyeska no later than November 18, 1999, an action plan to address the HIRD findings discussed with Ed Morgan on September 24, 1999, described earlier in this letter.
3. Complete your investigation of the recent claims of HIRD by and against Jeanne Sayre and develop an action plan to address the conclusions of the investigation. Present the results of the investigation, your conclusions and the proposed plan of action to Alyeska no later than November 22, 1999, and prior to taking any disciplinary action affecting Jeanne Sayre. If your investigation determines that non-disciplinary intervention is necessary to stabilize the situation, this action is permissible but must be reviewed with Alyeska prior to implementation. (SX 43).

Several days later, Conway responded to Howitt's letter. (SX 47). This stated, in part

In addition to responding to the requests above, I would like to take exception to some of the points you made in the subject letter.

The implication you raise that VECO has been negligent in our response and timely corrective action is not true. On the contrary, we feel that due to the sensitivity of these cases, and the recent rulings that have gone against both VECO and Alyeska, that a thorough review of all actions planned needed to be done prior to implementation. The haste of both companies in the past has not resulted in satisfactory results.

VECO respects Alyeska's right to ensure that your contractors are complying with your HIRD policies and that they respond to concerns raised in the Alyeska system. But our primary concern in all of this is to ensure we are treating all our employees including Jeannie Sayre with the utmost respect.

As in the first DOL decision, the employees involved acted in concert with both internal and external advice. The intent was not to cause any harm to the individual involved. The employees have been counseled and the discussions are documented (attached).

As noted in the letter, the employees will attend the Supervisor Training course mentioned above.

Conway testified that he, Lynn Palazzotto, and Jamie Slack reviewed the November 1999 Atkinson report. (See JX 4). Conway relied on the second report as the basis for discipline in May 2000. (See JX 23) (TR 954).

Conway personally delivered the warning in 2000 as Sayre had complained about Johnson and Ebersole, his subordinates. Conway stated that VECO worked in 5 regions in North American and that the company had about 4,000 employees.

Robert Shoaf

Robert Shoaf testified that he was a vice-president for Alyeska and that from September 1998 to February 2000, he was responsible for creating an open work environment initiative. He was now assigned to work with the Joint Pipeline Office. The 1998 initiative was begun due to company internal assessments and pressure from the government.

On May 17, 1999, Morgan, manager of the Alyeska ECP, wrote to VECO's then outside counsel regarding the disparate treatment of Sayre which appeared to be retaliatory. This letter was copied to Shoaf, Trotter, and Ebersole. (SX 35).

In the October 14, 1999 meeting with Morgan and Shoaf, the Complainant and Earl Hall, the Alyeska Valdez team leader sought a badge hold for Johnson and debarment of VECO. Thereafter, Shoaf and Hall and others exchanged e-mails. (AX 109). Shoaf testified that there was some misunderstanding regarding the meeting content, and he informed Sayre that she could hire an investigator but that person could not be a part of the ECP investigation. (TR 1011).

On November 4, 1999, Shoaf met with others regarding a recommended way forward on the Complainant's issues. (SEE JX 67). Recommendations included a badge hold for Johnson, but no action was taken. In late May 2000, Shoaf sent a copy of Sayre's

"letter to Congress" to Val Molyneux, president of VECO. (SX 55).

Howitt of Alyeska was directed by the Alyeska Executive Review Board (ERB) to resolve issues and he wrote to Conway on November 11, 1999. (AX 115). This Board was available to review contractor personnel actions on a volunteer basis, but there was no contact from VECO on this issue. (TR. 1030). The ERB and the Alyeska People Team reviewed Conway's response.

Michael Chafee

Michael Chafee, a senior drafter for VECO, testified that he first met the Complainant at a preview meeting in September 1999. At that time, the Complainant acted as if she was in charge and as if the drawings were "hers". There was a dispute with Keith Nuss as to the drawing of a level switch. Nuss wanted to draw the switch according to the standard, but the Complainant stated that such a change had to be approved by Charlie Lee.

VECO's counsel asked

Q Did she say she would have to change the drawings according to some standard?

A No. She just said that we'd go ahead and do what we wanted, and she'd change them later.

Q So, no explanation that there was some Alyeska standard that would require her to change it?

A No. (TR 1084).

Chafee testified that Nuss's demeanor was normal and that he did not want to make changes "the way the redlines were." Chafee indicated that Walters had not made derogatory remarks about the Complainant or discussed a transfer. Chafee later acknowledged that there was some arguing between Sayre and Nuss regarding the redlines. (TR 1093).

Robert Atkinson

Robert Atkinson testified that he had been a consultant since 1991 and had conducted some 15 investigations prior to the investigations in this case. The Complainant's case was his first in working with VECO. He was hired by Lynn Palazzotto and was told that he was to investigate whether or not the Complainant had created a hostile work environment. Palazzotto

gave little background information as she did not wish to create a bias. (See TR 1161).

Complainant's counsel called attention to the March 1999 written warning from Johnson to Sayre. (SX 173). Atkinson testified that he was not aware of that warning or the fact that the warning was later held to be retaliatory. (TR 1297). He was aware that the Complainant had been successful in an earlier proceeding.

In the October 1999 interview, Johnson told Atkinson that earlier that year Nuss, Sanabria, Pietrak, and Wise had told Johnson that they could not work with Sayre as they were afraid of disagreeing with her. Atkinson indicated that his interviews suggested that these people were not afraid of problems being found but were concerned about focus on their project. Charlie Lee was upset because Sayre filed two 8811s on his decisions without consulting with him.

Atkinson interviewed most of the people who attended the pre review meeting on September 28, 1999. Sayre had indicated that she could not change the drawing of the level switch as this would override Lee's decision. However, other attendees indicated that

she essentially just refused, and actually close to the end of the meeting said some -- something to the effect of, you know, "So, do whatever you want. I'll just change it when it comes back to the pump station."

Q What was -- what was it she was refusing to do?

A Change the shown position of the switch. (TR 1320).

Atkinson stated that at the meeting, the Complainant did not mention to the others the necessity for Charlie Lee's approval for a change. Atkinson understood that Walters did not know of the problem with the drawing of the switch until he came to PS7 on October 6 to inspect a generator.

Atkinson concluded that in the meeting on October 7 Johnson's comments regarding restricted access to the JPO were limited to completion of design packages before submission. He reported that no one else took Johnson's comments as limiting the reporting of concerns to JPO. (JX 4, p. 671).

Complainant's counsel called attention to JX 20, Atkinson's interview with Walters. Counsel read

"I asked Dave Walters if any of this could have been avoided. Dave Walters said that he did not believe so because Jeannie Sayre is not capable of working with anyone," and that's what he said to you, is it not?

A. Yes.

Q. Okay. Now, in contrast to that, I'll have you look at Jeannie Sayre's statement, which is Joint Exhibit 10. Joint 10.

A Yes, okay. Thanks.

Q And if you look at the third place from the bottom, "I asked several witnesses -- I asked why several witnesses would view her behavior as described. She replied it was because JoDee Johnson had poisoned the group against her."

A Um-hum.

Q That somewhat frames the issues that you were dealing with, does it not? Those two statements.

A I'm not sure of the question there. So, that -

Q Well, wasn't Ms. Sayre indicating that she was fearing retaliation, that Ms. Johnson had poisoned the group against her, and Mr. Walters was saying, "Jeannie Sayre is incapable of working with anyone"?

A David Walters saying that?

Q Yeah. Did you agree with Mr. Walters' statement?

A No. I mean, I didn't agree or disagree. I felt I was just there to get, you know, get his statement, get an understanding of the facts. (TR 1337 and 1338).

Counsel also read the interview notes with Ron Robinson who stated that he had not had problems with Sayre. Atkinson read

"However, he believes most conflict originates with Jeannie Sayre, due to the fact that she is overly sensitive and views others as intimidating or harassing her." So, he was speculating that, you know, perhaps she didn't have evil intent, but that because of some emotional issues, that she initiated the conflict.

Q Emotional issues? Does he talk about emotional issues here?

A "Overly sensitive."

Q Okay. She was fearful of people harassing or intimidating her, was she not?

A I -- I couldn't speak to that. I -- I've never experienced Jeannie as fearful. I've experienced her as combative, which is actually the opposite of fearful. So, I--I can't answer that. (TR 1333 and 1334).

Complainant's counsel referred to JX 35 where Atkinson describes that Ms. Sayre was blind-sighting her management with information. Atkinson stated that it read

"However, it seems that a reasonable person would at least inform their management if they knew that information that they were about to convey would put them in some distress.

... Q Right. So, this was putting manage -- her conveying of some information here was putting VECO management in some distress in your -- in your words. Is that correct?

A Correct. (TR 1162).

Q Did you have any idea -- do you have in your mind, as you sit here today, some idea of how Ms. Sayre would determine what she should have sent to VECO and what she should not have sent to VECO management when she's corresponding with a variety of other people on the Trans-Alaska Pipeline?

A Well, I would hope the number one reference would be judgment and also, right up there with that, would be policy.

Q Okay. And what judgment and -- her judgment?

A The judge -- yeah, and you would hope that would be the -- yes.

Q Well, did you -- do you -- do you think that Ms. Sayre would have understood how VECO would have reacted to this -- this memo (to Hicks) at the time she sent it?

A Yes, I do. (TR 1166).

Complainant's counsel and Atkinson discussed the late 2000 EDAC report and the communications between Karen Allen and Sayre. While Sanabria may have pulled the documents, he was away from the facility and Sayre's name was placed on the report as she should have to resolve the problems. (See JX 35). Atkinson felt that Allen and Sayre should have communicated directly. (TR 1187).

Atkinson was questioned about interviews following the March 2000 meeting. Counsel noted that while Johnson reported that Sayre was uncooperative and discourteous, Giles said that nothing exceptional happened and Merdes indicated that she was not particularly uncooperative. Walters and Redmond had differing opinions as to her behavior. Giles had sent Sayre and Lee to review problems at NPMS.

Atkinson stated that it was important in working for a client for an employee to be able to resolve conflicts rather than to create conflicts. Atkinson also concluded that the complainant falsified work records in mischaracterizing the March meeting notes. He also felt that there was inappropriate conduct in the content of the turnover notes. (TR 1217).

During the first investigation, Sanabria had informed Atkinson that Sayre's turnover notes were derogatory and implied that Sanabria was not following her directives. Johnson indicated that the notes showed that Sayre was not able to work through issues with others.

Atkinson indicated that Karen Allen was offended in late 1999 regarding the tag issue when Sayre avoided Allen and went to Ann Grubb on this issue. Allen was offended by Sayre's e-mail on September 29 which stated "Are you with me? Any questions?" (TR 1316). Atkinson stated that at the September 1999 meeting, the consensus was that Sayre refused to make the switch position change, rather than stating that she did not have the authority

to make a change. Sayre later sent an e-mail to Walters regarding her lack of authority on that issue.

Atkinson testified that he had very limited contacts with Ebersole before the current investigations. His reports had not been edited by VECO. Atkinson informed VECO's counsel that Ann Grubb knew that Sayre was going around Karen Allen to obtain tag numbers. Eventually, Grubb stopped the procedure of assigning numbers.

VECO's counsel asked

Did you conclude that -- that Jeannie Sayre's unwillingness or inability to work through issues with her colleagues actually, itself, had a negative impact on the work on the Pipeline regarding safety or the integrity of the Pipeline?

A Yes, absolutely.

Q And how -- would you explain that?

A Well, I mean, with -- without going through my bullet points, which would be one explanation, you can imagine that while -- while they're trying to get a back-log of -- of good drawings, work through the back load -- back-log of drawings to get good drawings -- they're doing that in the interest of getting good drawings at the facilities to technicians and so forth so that they can work against good drawings. One of the effects that Jeannie's behavior had was that this -- this back load essentially wasn't going any where. The back load persisted, a situation that, you know, was really intolerable given -- given the -- that that was VECO's primary job. That was their reason to exist, was to -- was to get good drawings out to the technicians.

Q If you go down to your fifth bullet point there -- no, your fourth bullet point, it says, "a confrontational atmosphere when Ms. Sayre is involved that inhibits the open communication needed for effective problem solving and decision making." Is that a consistent theme of what Ms. Sayre's co-workers reported to you?

A Yes.

Q And you testified quite a bit on -- or you were asked on direct examination about employees' fear of Ms. Sayre or concerns about her elevating issues either to the Employee Concerns Program or to supervisors, but my question is, is one of the reasons that Ms. Sayre's co-workers did not want to work with her is because she was confrontational in her dealings with them?

A Correct. (TR 1361-2).

Atkinson testified that after he submitted the first report there was no further contact with VECO until Palazzotto contacted him in the early Spring of 2000. He was asked to conduct the second investigation regarding the March 24 meeting which involved the NPMS. The issues involved professional engineering stamps, city permitting, and fire prevention redlines.

The investigation indicated the most participants felt that Sayre was less than cooperative, refused to abide by the group decisions, and assigned work to herself. The group decided that the Alyeska system integrity department would inquire about the stamps. The issue of permitting was considered to be closed, and Randy Redmond was to handle the redlines. Jim Giles, an Alyeska asset manager for PS7, noted inaccuracy in Sayre's meeting minutes, and he contacted Johnson who was Sayre's supervisor. (TR 1374).

Thereafter, Johnson and Sayre corresponded with e-mails, and Atkinson felt that Sayre disregarded the supervisory relationship and did not effectively resolve problems with colleagues.

The third report concerned complaints by the complainant against Walters and his complaints about her. (JX 35). This focused on the October 2000 designer/drafter meeting. Sanabria had been reassigned to PS1 and the meeting discussed possible relocation of all pump station designers to Anchorage or Fairbanks with replacement by document technicians. Atkinson stated that his investigation did not reveal that anyone verified that Walters had spread rumors about Sayre at the meeting.

The complainant was upset with Karen Allen as the EDAC report attributed errors to Sayre although she had not checked out the drawings in question. Allen indicated that the report was computer generated and had to be attributed to someone. Sayre referred the matter to Walters, the lead drafter, but Atkinson felt that this could have been resolved by a telephone call between Allen and Sayre.

Sayre found discrepancies in tag numbers and sent e-mails to Scott Hicks, an Alyeska operation manager, and to other Alyeska personnel without notification to VECO. Hicks referred the matter back to VECO employees, Redmond, Walters, and Rechenthin. Atkinson concluded that Sayre had not collaborated with colleagues. The complainant informed Atkinson that the e-mail was sent to Hicks as VECO co-workers - Walters, Nuss, and Wise - were not communicating with her.

Atkinson expressed the opinion that Sayre should not return to PS7 or the Fairbanks office as there were irreconcilable differences among those personnel. (TR 1422).

James Giles

Giles testified that he was now the southern asset pipeline manager for Alyeska and that prior to October 2000 he had been the asset manager for pump stations 7 through 10. He had spent about half-a-week every other week at PS7. He was responsible for NPMS which was 60 miles south of PS7. There were 28 employees and 12 contract employees. Sayre and Sanabria were the only VECO employees at PS7.

The VECO employees had assigned projects but Giles used them to assist on some items such as NPMS. Sayre was one of two people sent to NPMS to collect information as to what was needed to be done to complete that project. Giles asked Sayre to present the list at the meeting in March as she was the most familiar with the details.

Giles testified that Sayre's behavior at the meeting was not inappropriate and that when he learned of her suspension, he complained to Howitt, his supervisor. Howitt informed Giles that the suspension involved incidents beyond the meeting in March. Giles acknowledged that Jodee Johnson was Sayre's supervisor and that her assignments were generally provided by VECO.

Giles reviewed the March meeting notes prepared by Sayre and he then contacted Johnson. (See AX 153 and AX 158). Giles seldom attended meetings held with Sayre and co-workers. Giles did not have problems with the complainant's turnover notes but did see that she had made a caustic remark to Sanabria.

Keith Nuss

Keith Nuss testified that he was an electrical and instrumentation designer and that he had worked for VECO in the Fairbanks office for four years. He reviewed drawings with

redlines that were sent in from PS7 and other sites. He did not have problems with the complainant until a preview meeting where the level switch was discussed. As there was a difference of opinions as to the proper position on the drawing, Nuss asked Walters to verify the device. Sayre acted as if she were in charge of the meeting and she repetitively pointed out things that needed to be checked. (TR 1502).

Nuss was concerned that a technical dispute might be raised to an ECP complaint as ECP had been unfair in the past. Nuss stated that there had been rumors for years about the relocation of field designers. Nuss had changed some heating ventilation tags at NPMS and Sayre had expressed some concern to Hicks about this action. Nuss acknowledged that he did not fully follow the correct procedures.

At a meeting in the Fall of 1999, John Conway met with employees, mentioned that Sayre had been reprimanded, and asked employees to interact with her and make her part of the team. Nuss testified that at the meeting in 2000, there was speculation as to relocation of all of the pump station designers. Nuss stated that a designer could make a non-technical change but needed the signature of an engineer for a technical change. He felt that the level switch was non-technical. During that episode regarding the switch, Sayre was aggressive and a little angry rather than being hostile.

Kerry Deral Wise

Deral Wise testified that he had been the data guardian in the VECO Fairbanks office since August 1997. Johnson had been his supervisor. He had heard Walters and others tell people that Sayre was paid a lot of money from a lawsuit and was supposed to leave VECO but did not do so.

Sayre had requested a function code for a switch and the request was denied. The request was repeated several times and resulted in derogatory e-mails. Wise felt that the complainant would go outside the system to get things done. Wise felt that O'Connell resolved this issue on June 1999 although Sayre was still sending e-mails on this issue in May 2000.

Karen Nelson, a tag specialist, contacted Wise after she was asked by Doug Franklin to manually put tags into the TDDI system at the request of the complainant. Wise spoke to O'Connell, his supervisor, who told Franklin that this was improper and that changes to the database had to be routed through the tagging

folks. Nelson had been upset by e-mails that had been sent by Sayre. Wise stated that in a meeting Conway asked employees to give Sayre a "fresh start."

Charlie Lee

Lee testified that he was an electrical engineer employed by Alyeska and that he had worked as a facility engineer at PS7 for 5 years. The complainant had filed an 8811 regarding one of Lee's drawings and his concern was that she made something public before discussing the matter with him. The project was to incorporate recent changes "as built" into the master drawings. (TR 1594).

Lee indicated that Sayre was proficient in redlining changes that had to be made and that she always obtained his approval on drawings, when needed. Complainant's counsel noted SX 13 and JX 15. Lee stated that he received turnover notes but seldom read all of those created by the complainant due to the extent of the content.

In October 1999, Walters sent e-mails stating that redlines would be rejected that eliminated cable tags. (SX 177). Lee stated that this was a routine message and that he was not offended. (The complainant had sent a response to Walters and claimed criticism and retaliatory behavior).

At the NPMS meeting in March 2000, there was a discussion as to the state fire marshal's requirements as to fire alarms. Lee researched the matter and then had a discussion with the complainant. She never agreed that he was correct but the issue was removed from her punch list. Sayre had identified electrical code violations at NPMS but Lee concluded that the standards were met.

Lee discussed the matter with Sayre but she was not receptive. The complainant had talked to a state inspector who disagreed with her position. Lee had to respond to an inquiry from Giles regarding issues raised by Sayre, and he also had to speak to the state inspector and to the Alyeska Electrical Administrator.

Alyeska's counsel asked

please reiterate for us what your assessment was of the complaints the technicians at the pump station had about their interactions with Ms. Sayre.

A Well, they felt they were being used on some type of agenda of hers. She would ask an innocuous question about, you know, something on a drawing. "What do you think of this?" Or, you know, "Should we do this?" And they would say, you know, "Yeah, that -- that looks fine," and then this item would show up on a list somewhere as a - - as a statement that the technicians at Pump 7 want this this way. They felt they were being used, and they were going to avoid any future happenings of this.

Q Is that something you wanted to avoid as well?

A Certainly. (TR 1620-1).

The complainant had raised an issue regarding the air intake at NPMS. Tait, a VECO mechanical engineer, and Lee determined that no code violation was involved.

David Walters

Walters testified that he first worked for VECO as the DUP team lead in Anchorage. He later worked as the design/drafting lead in the Fairbanks office. Walters filed an ECP complaint against Sayre as employees told him that they preferred to work with Sanabria as "I don't want to take a chance of anything being said wrong and her filing an ECP lawsuit against them." (TR 1663). He had previously informed Johnson of his concerns. Jodee had told him to continue working with Sayre as he would with anyone else.

He filed the concern as things were not running smoothly and as there were complaints from four workers. At the September 1999 preview meeting, the complainant had a discussion with Keith Nuss regarding the level switch. Sayre indicated that she would fix it the way she wanted. Karen Nelson was upset but Ann Grubb did not express concern over the complainant's attitude. (See JX 20).

On October 4, 1999, Walters sent an e-mail to Johnson stating that co-workers hesitated to speak to the complainant without fear of repercussion. (JX 59). The Anchorage and Fairbanks offices withheld work until Sanabria came on duty. (TR 1690).

Complainant's counsel noted Sayre's e-mail on October 4 regarding verification of items. (SX 207). Walters testified

that he had to make a trip to PS7 to verify generators and that the switch was an incidental problem. Walters did discuss this problem with the complainant and with Dub Doubleday.

Counsel noted Walters' statement to Atkinson (JX 20) where he indicated that Sanabria expressed frustration based on Sayre's October 11 turnover notes. Walters told Atkinson that Sayre could not work with anyone

Because everyone that I had -- that had come to me, expressed their concerns, of all people that came and talked to me, Mr. Sanabria was the most defensive for Ms. Sayre. He would never ever say anything. He was always either turn the other cheek, or, well, there may have been a reason, and, yet, he eventually got to the point where he could not get along with her. (TR 1701).

Counsel asked

Q And no one asked you to file a complaint that she was creating a hostile work environment, did they?

A No, Ma'am.

Q So, aren't you making this judgment based on a lot of rumors?

A Part of it is rumors and the fact of my own fear of having ECPs or lawsuits filed against me. Yes, Ma'am. The fact of people not being able to work with her or wanting to work with her, that was not a rumor.

Q That was not a rumor?

A No, that was a fact. People told me that.

Q They told you they didn't want to work with her?

A Yes, Ma'am.

Q Okay. And they told you why?

A For that fear. Yes, Ma'am.

Q And - and they told you that the reason why was because she'd filed complaints and a lawsuit?

A They had just -- they had heard -

Q Did they tell you the reason why?

A They said they didn't want to have a chance of ECPs being filed against them, is what they said. (TR 1702-3).

Sanabria told Walters that he felt that Sayre's turnover notes implied that he should work on her to-do-list. However, he had to perform projects assigned by the engineers.

Walters was upset by Sayre's turnover notes in early October 1999. (SX 166, 1.17). Sayre referred to discussions with Giles regarding PS7 drawings. Walters reported that it was previously decided that Charlie Lee would handle the drawing decisions. (TR 1710).

VECO's counsel asked Walters about the October 4, 1999 e-mail to Johnson. (JX 59). Walters had reported that employees had difficulty interacting with Sayre and in bringing issues to resolution. In the October 4, 1999 e-mail to VECO employees, Walters meant to pass on information regarding cable tag redlines and had no intention to be critical of anyone. (SX 177). However, the complainant e-mailed and stated that he had been critical of her work. Walters was surprised at this response but felt that it was consistent with reports from other people.

Walters stated that in the meeting in October 2000 there was a discussion as to relocation of all field designers on the pipeline.

Joanne Dee Johnson

Ms. Johnson testified that she was an engineer and had been employed by VECO for six years. From May 1998 until May 2000, she was the District Manager in Fairbanks. She was responsible for liaison with the Anchorage office and with Alyeska. She supervised about 50 people as well as summer hires.

Johnson testified in a Department of Labor hearing in 1998 and conducted a performance evaluation for Sayre shortly thereafter. The evaluation was favorable but there were problems in communication. Johnson had Sayre attend turnover meetings in Fairbanks from December 1998 to April 1999. In early 1999, Johnson gave Sayre a warning in writing. (SX 173).

Johnson stated that

in the turn-over meetings, we went over her turn-over notes, went down the list of things that were on -- on the list. We talked about how to write things in a way that could not be misconstrued. We talked about different issues that I could help her resolve, and basically tried to get things rolling where we had a better working relationship on resolving issues. (TR 1761).

The meetings were stopped as it was determined that these were retaliatory. The warning in early 1999 was based on complaints from VECO employees about the creation of a hostile work environment. (SX 173).

In October 1999, Johnson sent e-mails to Lynn Palazzotto and to Billie Garde (affiliated with Alyeska and former counsel to Sayre) seeking advice on dealing with Sayre. (JX 17). Palazzotto referred the matter to Atkinson for an investigation. Subsequently, Johnson was informed that Conway had delivered a written warning. Johnson kept Ebersole and Conway informed by e-mail as to her actions with Sayre.

When interviewed by Atkinson in October 1999, Johnson gave him a list of names of employees who had had problems with the complainant. (JX 11). Johnson did not participate in the disciplinary action in January 2000. Conway and Palazzotto came to Fairbanks and asked people to work with Sayre. Subsequently, Conway gave the warning to the complainant. Johnson transferred to Prudhoe Bay in May 2000.

At the meeting in March 2000, Johnson indicated that Sayre was uncooperative and argumentative. Sayre wanted to contact the state board regarding the professional engineering stamps but Johnson felt that she and the project engineer should address this issue through Alyeska. Sayre was concerned about a "code violation" regarding the air intake system. It was concluded that Redmond, the project engineer, and Henry Kim, the code compliance engineer, would decide. It was determined that the vent was not a code violation. (TR 1789). Johnson stated that Sayre was free to inquire on her own but not on behalf of either company.

Following a meeting on October 6, 1999, the complainant alleged that Johnson stated that nobody could go to JPO without approval. Johnson testified that this was a false accusation as approval only related to sending engineering packages to JPO.

Johnson informed VECO's counsel that the turnover meetings that began in late 1998 were held on the advice of VECO management. These were intended for Johnson to develop a better relationship with Sayre and to address performance issues. Sayre filed a complaint about this action, and an ECP investigator, Gary Smith, later informed Johnson that Sayre was seeking a badge hold. A hold would preclude Johnson from working.

At that point, Johnson felt that Sayre intended to have Johnson fired. E-mail comments from Sayre included "Did you get that?", and telephone responses were insubordinate, demeaning, and belittling. (TR 1864). Counsel noted JX 4, p. 0682 as an example of such e-mails.

In the Fall of 1999 when Walters informed Johnson that he was going to file a complaint, she was not surprised in view of her dealings with the complainant and recent comments from Sanabria. The complaint was forwarded to Palazzotto, and during the investigation, Johnson provided names to Atkinson. Johnson was also interviewed in the Spring of 2000 but Atkinson never provided information as to the contents of either report.

Counsel called attention to Section 1.23 of AX 158, the turnover notes for late March 2000. The complainant had reported "code violations" and indicated that she did not care for negative feedback from meeting participants.

Counsel asked

Were there negative remarks made about Ms. Sayre, at this meeting?

A No, there weren't any negative remarks made about her. The general attitude of the meeting was, "If we've got a code violation we need to fix it, and if there are other code violations out there, we need to get them addressed. We need to know about them so we can address them."

Q Was there an attitude of lack of cooperation and denial on the part of the persons involved in the North Pole Metering Station project?

A Absolutely not. (TR 1874-5).

Shortly thereafter, Giles pointed out to Johnson inaccuracies in the meeting minutes prepared by Sayre. In late March, Johnson sent comments to the complainant regarding the meeting notes. (JX 60). Sayre's response was considered to be insubordinate and she made no attempt to apologize for inaccuracies. (TR 1878). Johnson testified that Scott Hicks made the necessary changes to the meeting notes.

Karen Allen, a VECO project tech, was assigned in late 1998 to track and assign ER and Z numbers. By early 1999, it was clearly known that Allen was in charge of this item rather than Doug Franklin or Ann Grubb. Johnson stated that while Giles from Alyeska may have asked her to assign projects to Sayre for him, Johnson remained the supervisor. Johnson sought advice from Billie Garde who recommended that Johnson transfer from being Sayre's supervisor. Subsequently, Johnson was transferred to the North Slope.

Johnson acknowledged that she told Atkinson in October 1999 that workers were avoiding Sayre. Johnson had told Walters to inform employees that they needed to work with both shifts.

Complainant's counsel noted SX 35, a May 1999 letter from Morgan, Alyeska's employee concerns program manager, to a VECO counsel regarding treatment of Sayre. Morgan informed this attorney, as he had previously told Ebersole, that such conduct was retaliatory.

Johnson testified that Ebersole had not given specific advice regarding the complainant but he was aware of the meetings. Johnson indicated that she as well as Sanabria and Dave Jensen considered the October 1999 turnover notes to be inflammatory and to order and demand as opposed to making requests.

In November 1998, Johnson gave Sayre a performance review. The complainant expressed disagreement by e-mail, and Johnson responded. (VX 162).

Patricia Lowdermilk

Lowdermilk testified that she had worked for VECO for seven years and had been in the Fairbanks office for the last two years. At the design drafter meeting in October 2000, there was a discussion of the old rumor that designers would be brought into the offices from the pump stations. Lowdermilk made the only comment about the complainant by stating that she did not

think that Sayre would move to Fairbanks as she had a house in Anchorage.

Lowdermilk told Sayre of the discussion. (JX 63). Lowdermilk testified that she had never heard Walters make derogatory comments about the complainant. In a comment regarding her interview with Atkinson, Lowdermilk stated that Sayre would "misunderstand" rather than "misconstrue or misrepresent." (TR 1953).

Lowdermilk saw Sayre soon after the meeting in October. VECO's counsel asked

Q Okay. And in that conversation with Ms. Sayre, did you tell her that Mr. Walters had made any derogatory comments about her?

A No, I did not.

Q Did you tell her that you were disgusted with Mr. Walters' rumors?

A No, I did not.

Q Did you tell Ms. Sayre that she had been singled out for discussion, in that October 4th meeting?

A No, I did not.

Q Did you ever tell Ms. Sayre that you were disgusted with Dave Walters?

A No, I did not. (TR 1957-8).

Sarah Lynn Palazzotto

Palazzotto testified she worked as a civil rights investigator for the Anchorage Equal Rights Commission during the 1970s. In 1993, she came to VECO as a claims coordinator in workers' compensation. She later became the corporate litigation manager.

Palazzotto had listened to tapes from the turnover meetings and concluded that Johnson maintained a professional attitude. Sayre became confrontational as she thought that she was being singled out for such treatment. In April 1999, the complainant received a written warning for personal attacks on Johnson (SX 173). (The warning was stricken by the June 1999 letter of the

Regional Administrator of OSHA). (SX 36). VECO took remedial action. (AX 150).

In the Fall of 1999, Johnson informed Palazzotto that Walters had received complaints about Sayre from his workers. Johnson sent a letter by fax (SX 9), and Johnson forwarded an e-mail from Walters. (JX 59). Palazzotto informed Cindy Wick at Alyeska ECP. Sayre had filed an ECP complaint at about the same time. Sayre indicated that the filing of Walters' complaint was retaliatory. The investigations were to be combined. Billy Garde at Alyeska indicated that Palazzotto should withdraw at the request of the complainant.

Atkinson was interviewed and selected to conduct the investigation. Atkinson's report was given to Jamie Slack, Palazzotto's boss. Atkinson met with those two as well as John Conway. Palazzotto indicated that an Atkinson report was more thorough than an ECP investigation. Palazzotto, Slack, and Conway agreed that Conway should give Sayre a written warning in late 1999 as he was familiar with her.

Palazzotto stated that the warning was based on the Atkinson report and that Conway was unaware of actions in early 1999. Attached to the warning letter in January 2000 was an e-mail from Sayre to Giles which Palazzotto thought was inappropriate as a VECO employee was pleading a case to an Alyeska asset manager. (JX 22).

In March 2000, Palazzotto was informed through Johnson that Randy Redmond, a VECO employee, had filed a complaint with Alyeska ECP regarding Sayre's portrayal of him in the NPMS meeting minutes. Alyeska turned the matter over to VECO and Atkinson was hired to investigate. After review of the report, the company (Palazzotto, John Conway, and the incoming VECO president Val Molyneux) decided

To issue another written warning, because it was their view that she, Jeannie, had clearly violated the first written warning, and because there was -- her behaviors of violation of the first one, that we needed to do something a little stronger, and it was determined to give her two-weeks unpaid suspension in addition to a second written warning. (TR 2012).

Palazzotto testified that the early 2000 warning was given as Sayre had not changed her behavior regarding communication since the warning in late 1999. Palazzotto stated that this warning was not based in any way on events in early 1999.

In October 2000, Sayre complained to Pat Lee in Human Resources about Walters' conduct in spreading unfounded rumors. Lee forwarded the e-mail to Palazzotto who sent a copy to Dave Rechenthin, who was Johnson's replacement. Walters filed a complaint against Sayre and Atkinson was again hired to investigate.

The last Atkinson report was reviewed by Palazzotto, by Jamie Slack, and by Val Molyneux. After consultation, Molyneux decided to sever the employee relationship. Palazzotto agreed based on previous terminations and disciplinary actions that had been taken with other employees. (TR 2023). Palazzotto and Rechenthin delivered the separation notice to Sayre at PS7. (See JX 47).

Complainant's counsel noted JX 22, the warning letter in January 2000, and pointed to the attached e-mail from Sayre to Giles, Alyeska asset manager at PS7, which was cited as a confrontational example. Counsel asked

Q Do you know if the Employee Protection Provisions of the Environmental Statutes -- what they are, what they say? Have you ever read them?

A Thoroughly, no.

Q Do you know if the Department of Labor protects employees who raise quality control concerns outside the chain of command?

A I know that they're obligated to investigate their concerns. (TR 2055).

Palazzotto testified that the e-mail was selected as it was considered to be incredibly inappropriate and confrontational. Palazzotto acknowledged that the ECP program had a history of being considered to be unfair to the investigated party. She had attempted to change that perception, such as in outside investigations.

Palazzotto acknowledged a change of position in her e-mail sent in November 1999 to Wick, Conway, Howitt, Ebersole, and Slack. This stated

This is a follow up to our meeting and discussions this morning with our newly assigned counsel. Our position to date, with relationship to the 2 past DOL cases filed by J. Sayre, has been that VECO employees did

nothing that warranted disciplinary/ corrective actions.

In an effort to feel extremely comfortable with our position, we have asked our new counsel to review those cases and give us his opinion. Based on that opinion, we will revisit where we need to go on these issues.

Accordingly, we have scheduled a meeting next Wednesday, 11-17-99, at 8:00 to discuss our direction. (SX 156).

Palazzotto testified that following the DOL determination in June 1999 (SX 36), VECO expunged the prior records. Counsel pointed out that in Palazzotto's notes in April 1999, Clemen Gastro had praised Sayre. (SX 20).

VECO's counsel inquired regarding the April 2000 e-mail from Johnson which cited Redmond's exception to information in Sayre's turnover meeting notes. (SX 172).

Recall of Jeannie Sayre

The complainant testified that the turnover notes for NPMS were based on her being

asked to go and look and see if we were in compliance with the quality program turnover procedures. That was requested of me by the pump station ATLS, Rob Merdes and Jim Giles. I feel that it's my responsibility and that I was hired based on my knowledge and experience in electrical design and that's what I believe I should have based my opinions on.

Q Okay. And is that information what you were trying to communicate?

A Yes. (TR 2084).

The complainant stated that

JoDee was not a good avenue to through, as far as raising concerns. I had gone to the Joint -- I had to the Alyeska Employee Concerns Program, and they would substantiate the concerns, but could see nothing changing, as far as going back and correcting the actions that had taken before. For instance, the DRA Skit at Pump Station 7, it was substantiated that it

should have been a classified area, and yet when I left the pump station in January, the drawings were not changed.

... I had gone to the Joint Pipeline Office and with no responses, and that went back to DOL 1, they said that on the technical issues, they didn't have anyone in their office that was electrical, and they didn't have anyone in their office who was familiar with the fire protection, and there was a couple of items that were indeterminate that they never got back with me on what the results were. You know, was I wrong, was I correct, and what's the resolution? So, I found out that the Joint Pipeline office wasn't an available resource. I had gone to the State of Alaska OSHA, and they in turn, turned it over to the JPO.

Sayre wrote to Ms. Baca (U. S. Department of Interior) and she turned her letter over to the JPO, who then turned that letter over to Alyeska, who turned that letter over to my employer, VECO, and I believe I'm still being retaliated -- or at the time prior to my being fired, I was still being retaliated against for that. (TR 2085-6).

Deposition of Robert Malone

When deposed in March 2001, Malone testified that he was now a regional president for British Petroleum. Malone stated that he was president of Alyeska from September 1996 to June 2000. He stated that Alyeska had a zero tolerance policy for HIRD issues.

Actions ranged from a letter of reprimand to termination. A badge hold would deny access to any Alyeska facilities or working in Alyeska projects. Contractors were encouraged to follow the Alyeska code of conduct. Malone favored using the chain of command or ECP for concerns but thought that a person could bring an issue to any level where she felt comfortable.

The People Team held weekly meetings about concerns. The group included Malone, Morgan, and Shoaf as well as Howitt and others. Sayre had raised several issues that had been substantiated by the team. Morgan had informed VECO that that company had retaliated against Sayre. Howitt was designated to resolve the complainant's ECP concerns.

Complainant's counsel asked

Q And from my understanding of your open work environment policy, it was perfectly acceptable, as far as you were concerned, that Ms. Sayre come to you or the Employee Concerns Program as opposed to raising those same issues with VECO if she felt uncomfortable doing so; is that correct?

A I've responded to that question already and the answer is yes.

Q And would you find it unacceptable if VECO took action against her because she went outside of the company first?

A Yes, I would. (SX 215, p. 55).

Deposition of Karen Nelson

Nelson testified that she was a tag specialist for Alyeska. She previously worked in fiscal audit for the JPO account. A designer would submit a tag request and Nelson would issue a tag, if indicated.

Nelson informed complainant's counsel that

A Any time any information is requested to be loaded in TDDI, it is a procedure that needs to come through a tag specialist.

Q Can you tell us what a TDDI is?

A Technical drawing and document index, and it's the database is in which all of our drawing records, all of our tag records, all of our documents are stored in.

Q At the time of these e-mails, you were working with respect to TDDI?

A I always work in TDDI. It's the only thing I work in. (SX 216, p. 12).

Doug Franklin asked Nelson's help in loading information into TDDI at the request of the complainant. Nelson informed both that a request must be made to a tag specialist. Nelson and

Sayre exchanged e-mails which were copied to Walters and to Ron Robinson, the drawing control aid.

Nelson cited Sayre's e-mail of September 29, 1999 at 1:25 p.m. (p. 203 of attachments) and stated that

it came across as very demeaning and unprofessional, and basically the content that I got from it was that I didn't understand how to do my job.

Q Why did you have that understanding?

A Just certain phrases, "Any questions"; "are you with me"; "any questions"; "are you still with me?" Somewhat condescending.

Q You felt that was a condescending e-mail?

A Yes.

Q Did you talk to her about this?

A No.

Q But you send back the next e-mail?

A Yes.

Q Which is, "I completely understand what you are saying; I thought I clarified it in my last note." And again there's some emphasis here. You're emphasizing your position as the tag numbers do exist in TDDI?

A Yes. (SX 216, p.17).

Nelson acknowledged that Sayre's e-mail on September 29 at 3:58 p.m. was complimentary. (SX 216, EX 9).

At the preview meeting in September 1999, Keith Nuss emphasized his theory on the switch but Sayre appeared to get angry. Nelson testified that the complainant

Raised her voice. Stated that he could draw it any way he wanted to and that if she didn't like it when it got back to the pump station, she would change it anyway. (SX 216, p. 21).

In the interview with Atkinson in October 1999, Nelson reported that

"She believes that Jeanne Sayre will circumvent the system when she does not agree with a procedure, and when questioned about a procedure or standard will get very defensive." (SX 216, p. 28, EX 10).

Nelson testified that the spreadsheet given to Franklin by Sayre had a lot of inaccuracies. This resulted in tag numbers that did not exist in the TDDI, drawing numbers that were not valid, and tags linked to drawings that did not appear on the drawings. There were 69 errors out of 700 requests. Sayre had previously followed the proper procedure.

Deposition of Bill Kattness

Kattness testified that he was the employee concerns program corrective action coordinator for Alyeska. Cindy Wick had replaced Ed Morgan as his supervisor. Kattness' job was to inform his superiors of investigation findings and ask them to decide corrective action.

In September 1999, he met with Conway, Morgan, and Shoaf. Kattness' role was to record decisions and inform contractors and others if ECP violations were found. Kattness indicated that he was aware of a badge hold on three occasions. (SX 217).

Deposition of Val Molyneux

Molyneux testified in April 2001 that he replaced Conway as president of VECO Alaska in early 2000. He was president of another division prior to that time. Molyneux stated that the complainant was discharged

based on some investigation and uncooperation - lack of cooperation, which generated a hostile environment for my employees. And she was warned on two occasions about the hostility that she was generating.

He received information from the Atkinson reports, from Human Resources, and from an early discussion with Johnson. Johnson stated that there was difficulty in

the communications between Jeanne Sayre and her alternate and that it always appeared that she wanted to do all the work by herself without communicating

with either her alternate or sometimes her boss, Jodee, Jodee Johnson.

Palazzotto had informed Molyneux that employee statements in the Atkinson reports supported a conclusion that the complainant created a hostile work environment.

Molyneux also cited the minutes from the NPMS meeting and complainant's allegations of Walters spreading false rumors about her. The main reason for discharging Sayre was the hostility that she was generating among the employees. In addition, she bypassed normal communication channels and spoke directly to Alyeska, the client.

Complainant's counsel asked

Q Just tell me in general what VECO's open work environment policy is.

A It's -- first of all, there's expectations from the management, and there's expectations from the people that work for the management. And any individual at any craft level or any engineering level has the right to talk to his direct supervisors. If he's not satisfied with what's said with his supervisor, he has the right to go to HR and talk to HR or go above his head to the manager. If he's not satisfied with the manager, he has the right to go back to HR. If that doesn't work, he has a right to come to the business unit leader. If that doesn't work, he talks to me.

Q In your open work environment policy, do employees have the right to go to Alyeska Employee Concerns Program and share their concerns?

A I don't believe our policy says that.

Q So if an employee did go to the Alyeska Employee Concerns Program as opposed to going to their supervisor, would they be in violation of your policy?

A I don't know. I'd have to read it in detail. (EX 218).

Preliminary Discussion

As previously noted, the complainant filed a complaint in April 1997 alleging that she was terminated from employment in March 1997 in retaliation for engaging in protected activities. In August 1997, the complaint was amended and the complainant alleged that she was turned down for 35 jobs for which she was qualified.

Judge DiNardi presided at a hearing in October 1998. In a Recommended Decision and Order issued in May 1999 (Case No.: 1997-TSC-0006), that Judge awarded back pay and other damages but denied the second complaint.

Each Respondent filed a petition for review with the Administrative Review Board (ARB). Subsequently, the parties reached an agreement and the Complainant requested that the ARB approve the settlement and dismiss the case. The ARB agreed and took such action on September 30, 1999 (ARB Case Nos. 99-091 and 99-092).

The complainant worked as a designer for VECO at Pump Station Number 3 from September 1995 until she was terminated in March 1997. In late 1997, she was rehired as a senior designer at PS7. Joanne (JoDee) Johnson became the complainant's supervisor in May 1998.

In February 1999, Ms. Sayre filed a complaint with DOL and with Alyeska ECP regarding her required attendance at meetings with Johnson to discuss turnover notes.

On June 1, 1999, the Regional Administrator of OSHA informed Ebersole, Engineering Manager for VECO, that Sayre had claimed that she was singled out for disparate treatment because of her earlier complaints. The letter stated that

On March 30, 1999, respondent gave complainant a letter of reprimand allegedly because complainant had "created a hostile work environment" for her co-workers. Respondent said complainant's comments, particularly during a staff meeting on March 25th, caused the hostile environment. The investigation revealed that complainant's comments on March 25th were not appropriate, but did not rise to the level required to create a hostile work environment for her co-workers. The evidence did not support respondent's position that several co-workers had complained about the complainant.

The Regional Administrator decided, in part

1. Immediate cessation of the required monthly meetings with respondent. Destroy any and all tapes and written transcripts or notes of said meetings beginning December 1998. Expunge complainant's employment records of any reference to the exercise of her rights under the aforementioned federal statutes.
2. Remove and destroy the letter of warning dated March 30, 1999, from complainant's personnel file. (SX 36).

In late June 1999, the Alyeska ECP, in essence, agreed with the findings of OSHA. (JX 50). VECO appealed the Regional Administrator's decision, but later withdrew that appeal.

Pertinent Actions in this Case

The undersigned has recited the testimony in this case in detail. The following discussion has considered all aspects of the testimony, exhibits, and briefs.

1. January 24, 2000 warning letter from VECO to the complainant.

In October 1999, Walters informed Johnson that three workers had told him that the complainant was confrontational, rude, and condescending in her communications with them, and that she failed to follow the established procedures for resolving tagging problems with the drawings on which she worked.

Sayre was informed of the allegations and she filed complaints with Alyeska ECP and with DOL. The complainant reported that the allegation that she had created a hostile work environment was created by VECO or by co-workers in retaliation for her raising of concerns. The complainant also stated that on October 7, 1999, Johnson reported that all letters to the JPO had to be routed through Johnson.

Lynn Palazzotto from VECO and Cindy Wick from Alyeska discovered that complaints were pending with each firm. Palazzotto was to handle the complaints but with Sayre's complaint of bias, Palazzotto withdrew.

Robert Atkinson was hired to handle both internal complaints. The record does not demonstrate that Atkinson was biased or unqualified to be the investigator. In view of Sayre's

allegations against Palazzotto, an outside investigator was an appropriate course of action.

The complainant has argued that Atkinson should have been informed of the resolution of prior complaints where VECO was found to have retaliated. VECO, through Palazzotto, has indicated that the company desired that the investigation be neutral and not biased by previous events. Atkinson testified that while he learned that the complainant had been successful in an earlier complaint, he was not aware of the details, such as a finding of retaliation.

One of Walters' concerns was the interaction between Keith Nuss, a VECO designer, and the complainant at a pre-review meeting in late September 1999. Nuss informed Atkinson that the complainant stated she would redline his changes as to the drawings of the level switch regardless of his actions. (JX 7).

Karen Nelson described the pre-review meeting as Nuss had stated. Nelson stated that as a tag specialist, requests for such items should be submitted to her. However, the complainant would send requests through Doug Franklin. Walters sent a general e-mail to delineate procedures and when Nelson tried to clarify, Sayre sent a response which Nelson thought was demeaning. (JX 5).

Rob Sanabria, Sayre's alternate, was interviewed by Atkinson. Sanabria indicated that Sayre made large issues out of small ones and tried to impose priorities on design and drafting work in which he did not collaborate. Sanabria stated that Sayre had alleged that he had been cheating on his attendance records. Sayre and others were interviewed as well.

The complainant has indicated that Johnson's intent in October 1999 was to block all direct communication with the JPO. Atkinson interviewed numerous people and all but Sayre indicated that Johnson's message referred to design packages and was not intended to limit all communication.

Atkinson found that there were three untrue accusations made by Sayre. He found that as the lead Walters had the responsibility to make reports to the Fairbanks office and that he was not guilty of retaliation or harassment for criticizing her work.

Walters has acknowledged that he may have passed on a rumor about the complainant winning a large settlement in early 1999.

However, no other incidents of disparaging the complainant have been substantiated.

Sayre has denied that she accused Sanabria of improper time and attendance records. The statements from Johnson and Sanabria do not clarify this issue. However, one must note complainant's counsel's letter to DOL in early 1999. (VX 45).

Atkinson also stated that he did not find substantiation for the allegation that Johnson meant to control all communications to the JPO.

Atkinson concluded that the complainant had violated VECO policies regarding false accusations and as to employee conduct. The later finding involved rude, discourteous, or improper treatment of colleagues or clients.

In November 1999, the complainant made a statement to an OSHA investigator. (AX 118). In January 2000, the Regional Administrator of OSHA held that Johnson did not restrict communications with the JPO by the complainant or anyone else. It was found that Sayre's removal from the CIP committee was not pre-textual or related to engaging in protected activity.

The Administrator also found that regarding Walters' information to Johnson in October 1999

There is no evidence to support that these individuals were coerced by management into filing a charge of hostile working environment against the complainant. Rather, the evidence revealed that there is a great fear by coworkers that the complainant may file a charge against them for retaliation. As a result, they are very cautious in their dealings with her and watch what they say and do.

The Administrator also found that Alyeska ECP had taken action on Sayre's complaints as Alyeska's input resulted in

VECO removing Mike Ebersole from his position, hiring another legal counsel, issuing non-punitive reprimand letters to employees involved, and committing to provide training.

The Administrator recommended that the complaint be dismissed. (AX 139). The complainant was notified of this action. (AX 140).

In January 2000, John Conway, president of VECO, personally delivered a confidential written warning to the complainant. This noted that Atkinson had found instances where the complainant did not follow procedures regarding ER numbers and tag numbers and as to final approval of drawings.

The warning indicated that the complainant had not followed procedures, was rude and discourteous, and exhibited an unwillingness to work constructively with others. The complainant was expected to be cooperative with others, be civil, follow procedures, and follow the instructions of supervisors. The letter also stated

Finally, this written warning is not meant to discourage you from reporting quality, safety, environmental or ethical issues that affect the Company or client operations. Indeed, we expect you to report such concerns. (JX 22).

The complainant was engaged in protected activities by raising concerns regarding access to the JPO and safety issues in pump station seven. VECO and Alyeska were clearly aware of her activities in view of filing of ECP concerns, DOL complaints, and numerous e-mails to officials of both companies. The warning was clearly an adverse employment action. This event was close in time to the 1999 decisions by Judge DiNardi and by OSHA. Therefore, there is an inference of a retaliatory motive in the January 2000 warning.

VECO has essentially conceded the correctness of the above paragraph at page 39 of the post trial brief. However, VECO argues that VECO has legitimate non-discriminatory reasons for the action based on Atkinson's findings.

VECO asserts that Atkinson was independent and unbiased and that he conducted an objective and thorough investigation.

The first investigation was based on complaints by co-workers regarding interaction with the complainant. In addition, Sayre had alleged that Johnson wanted to halt independent contact with the JPO. The complainant's allegation against Johnson was not substantiated, and interviews clearly revealed problems in dealing with others.

I find that VECO has demonstrated legitimate non-discriminatory reasons for the adverse action, the written warning in January 2000.

At this point, the complainant must

prove that the proffered reason was not the true reason for the adverse action, and that the protected activity was the reason for the action. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 505-508 (1993).

The complainant states that contrary to the allegations of Johnson, Nelson, Chafee and Nuss testified that they did not wish to file a complaint against Sayre.

Instead, Mr. Walters made himself the appointed spokesperson because workers were afraid they would lose their job from Ms. Sayre's activity. The complainant alleges that Johnson openly encouraged worker animus against Sayre. It is also argued that Walters spread false information.

It is clear that Ebersole and Johnson were "reprimanded" for their actions in 1998 and in early 1999. Also, the complainant has reportedly filed more ECP concerns and other actions than any other VECO employee.

However, an employer may discipline and even terminate a whistleblower for misconduct as long as the disciplinary action is not an intent to retaliate against the employee for engaging in protected activities.

While Keith Nuss may have indicated that he would not file a complaint against Sayre, he felt that she was confrontational at the pre-review meeting and stated that without giving reasons that she would change any corrections that he made regarding the switch. (TR 1506).

Chafee's testimony was similar to Nuss' and Chafee stated that he was not aware of Walters making derogatory comments about the complainant. (TR 1091; See JX 45).

Karen Nelson's statement is found in JX 5. Walters testified that he filed a complaint based on concerns expressed by others. He agreed that no one at the pre-review meeting asked him to file a complaint. (TR 1665). Walters stated that he had been contacted by Nelson, and later by Nuss and Chafee. He later spoke with Ann Grubb.

Only Sayre and Sanabria, who alternated shifts, were VECO employees at PS7. Walters was the lead but was not a supervisor. I find it appropriate that a person in his position would pass on

concerns to a supervisor. There is no indication that Walters or Johnson encouraged the employee reports.

The complainant alleged that Johnson wanted to restrict all access to JPO. This has not been substantiated. VECO had the right to investigate complaints that an employee would not follow procedures or be cooperative or courteous.

The complainant has not demonstrated that the warning letter in January 2000 was retaliatory in nature.

May 31, 2000 Warning Letter and Two Week Suspension

The North Pole Metering Station (NPMS) is located on the pipeline south of Fairbanks. This facility measures the flow of crude oil from the pipeline to refineries in Fairbanks as well as the return of fluids to the pipeline.

On March 24, 2000, a meeting was held in Fairbanks to discuss the NPMS. Prior to the meeting, Jim Giles, an asset manager, had sent Sayre and Rob Merdes to the station to prepare a deficiency list. The complainant compiled and distributed the meeting notes. (AX 153).

Giles noted inaccuracies in the notes and reported this to Johnson. Johnson referred comments to the complainant and Sayre did not apologize for inaccuracies. Scott Hicks made corrections. Shortly thereafter, Johnson informed Palazzotto that Randy Redmond had filed a complaint with Alyeska ECP regarding the NPMS notes. Alyeska referred the matter to VECO and Atkinson was hired to investigate.

Redmond informed Atkinson that he had not dealt with the complainant prior to the meeting in March. He did not take issue with her behavior at the meeting but saw in her minutes that she had assigned to herself several items that were clearly given to him at the meeting. Some of these items were beyond her involvement or expertise and Johnson had specifically told her not to contact the Board of Engineers or the fire marshal. He felt that Sayre was not qualified to assess code or engineering design criteria. (JX 32).

Giles stated that there was no hostility at the meeting but that the minutes reflected three things that were not part of the agreement. Giles referred his comments to Johnson. Giles stated that Sayre would not trust an answer unless it was an answer that she expected. (JX 25).

Johnson reported that when asked to correct the minutes, the complainant took exception to each change. Johnson was also displeased by some of Sayre's comments in the March 2000 turnover notes. (JX 26).

Walters stated that Sayre was pushy and demanding at the meeting that he was distressed by her minutes, and that she was insubordinate in following Johnson's directions restricting outside contact on "interpretation" issues. (JX 30).

In the May 10, 2000 report, Atkinson found that

Ms. Sayre's behavior in and around the March 24 meeting demonstrates an inability or unwillingness to constructively interface with other employees or departments within VECO or the broader TAPS organization to reach resolution on normal issues that arise in the course of the work. Witnesses experienced Ms. Sayre as uncooperative in the meeting. And, instead of openly discussing her preference to be involved in follow-up activities, she chose to subvert the collaborative meeting process and simply usurp roles given to others.

...VECO HR Policy for employee conduct prohibits "Rude, discourteous or improper treatment of colleagues or clients." Multiple witnesses state that the comments that Jeanne Sayre included in her March 15-28 turnover notes were rude and discourteous and that she made malicious and misleading statements about NPM Project team members.

...VECO HR Policy for disciplinary action lists "Falsification of work records" as an example of behavior that is an especially serious violation of policy. All witnesses state that Ms. Sayre's meeting notes are a misrepresentation of the assignments made at the meeting. Furthermore, in Ms. Sayre's interview, she seems to acknowledge awareness that action items were not assigned to her. In addition, witnesses stated that her characterization of the March 24 meeting in paragraph 1.23 of her turnover notes is a fabrication. (JX 23).

On May 31, 2000, John Conway signed a confidential written warning. This stated, in part

Based upon Mr. Atkinson's investigation, we have reached the following conclusions:

- 1) You continue to refuse to work cooperatively with your co-workers, colleagues, and supervisor
- 2) You did not accurately report what took place at the March 24, 2000 meeting: and
- 3) You have failed to comply with VECO and Alyeska procedures for resolving the issues addressed at the March 24th meeting.

II. Plan of Correction

On January 24, 2000, you were given written warning after an independent investigation had been conducted in response to a similar complaint by your co-workers. You were warned that you would be subject to further disciplinary action if you continued: to exhibit an inability or unwillingness to cooperate with your co-workers; to be rude and discourteous to your co-workers; to refuse to follow procedures; and to disobey the directions of your supervisor. This most recent complaint by your co-workers and the conclusions of the resulting investigation show that you continue to exhibit problems in some of these areas.

We expect you to immediately cease engaging in this type of conduct and do the following as instructed in the January 24, 2000 warning letter:

- 1) Cooperate with everyone you work with, including colleagues, clients, co-workers and supervisors. Work with them to reach mutually agreeable solutions to problems. Show willingness to compromise rather than insisting that your way is the only way.
- 2) Be courteous, professional and civil in communications and meetings with colleagues, co-workers, clients and supervisors. Give consideration to how comments will be perceived by others before you speak, send e-mails, or draft meeting notes. Refrain from making comments that insult or demean the people with whom you work.

- 3) Follow established and agreed upon procedures, rather than taking it upon yourself to decide how best to resolve an issue.
- 4) Follow the instructions of your supervisor.

This is your second warning regarding related performance issues. You are being suspended, without pay, for two weeks. The specific dates of suspension are from June 6, 2000 through June 20, 2000. If you engage in similar behavior in the future, you will be subject to further disciplinary action, including the possibility that your employment will be terminated. (JX 34).

On February 15, 2000, the complainant filed a complaint which reported that in the previous month Conway delivered a letter of reprimand that did not follow VECO procedures. She indicated that she continued to be subjected to hostility, intimidation, and retaliation.

In April 2000, the Regional Administrator informed Sayre that as recent issues were the same as those previously raised, the new complaint would be consolidated with the previous one.

On June 23, 2000, Sayre amended the complaint in a letter to the undersigned ALJ. The complainant stated

On May 31, 2000, VECO suspended Ms. Sayre for two weeks, without pay, alleging that she failed to follow the instructions set forth in January.

Once again, the complainant was engaged in protected activity and the employer was aware of such activity. There was an adverse action, a warning and two week suspension, and the disciplinary action followed so closely in time as to justify an inference of a retaliatory motive.

VECO argues that there are legitimate non-discriminatory reasons for the actions taken in May 2000. As noted by Redmond, the March NPMS meeting notes were inaccurate and misrepresented the consensus of the attendees. It is argued that she assigned tasks to herself which were assigned to others, that she refused to correct the minutes, and that she was rude and discourteous.

It is clear that there were inaccuracies/ misrepresentation in the minutes. The complaint has conceded that the minutes were not completely accurate. Moreover, the minutes were eventually corrected by a third person. Testimony has reflected differences of opinion as to Sayre's demeanor and conduct at the meeting. The Atkinson report does reflect that the complainant did not follow procedures for writing the meeting notes and did not resolve the deficiencies when these were pointed out to her.

The complainant states that in the 4 months following the first warning neither Johnson nor anyone else had problems with her performance. Giles had asked her to make a deficiency list prior to the meeting, and Giles did not criticize her behavior at the meeting. Ms. Sayre states that the second warning was retaliation for her use of the "inflammatory" words such as "code violation" in the turnover notes.

There is no doubt that the complainant's use of the term code violation and some of her other phraseology was upsetting to VECO and Alyeska workers and management. Several people mentioned that they avoided the complainant in order not to be involved in any type of complaint. The complainant did have the right to raise safety and environmental concerns.

However, the second warning was given as the complainant deliberately misconstrued the minutes of the NPMS meeting and then did not correct the discrepancies.

Ms. Sayre has not given a satisfactory explanation for her actions. Moreover, there is no showing that anyone else was treated differently under similar circumstances. Palazzotto testified that the second warning with the suspension was consistent with VECO's procedures.

I find that the second warning was justified and was not based on retaliation.

Termination on January 18, 2001

On October 2, 2000, Lowdermilk informed the complainant by e-mail that a rumor indicated that the complainant might be transferred to the Fairbanks office and replaced at PS7 by an admin aide. (JX 63).

When interviewed by Atkinson in late October, Lowdermilk stated that there had been discussions of replacing all of the designers but she had never implied to Sayre that Walters had

made derogatory comments. (JX 44). (See Lowdermilk's testimony beginning at TR 1943).

A design/drafting meeting was held in the Fairbanks office on October 4, 2000.

On October 9, 2000, the Complainant sent an e-mail to Pat Lee, and this stated

It has been reported to me that Mr. Walters has again been spreading unfounded rumors about me throughout the VECO FBU office. I would like this to be investigated and resolved, immediately. This is the third time David has made completely untruthful statements about my character & work Situation.

On October 23, 2000, Walters sent an e-mail to Palazzotto and stated that he had heard that it had been alleged that he spread rumors about the complainant at the recent meeting. Walters asked Palazzotto to investigate. (JX 35).

On October 31, 2000, the complainant informed Walters that Karen Allen had erroneously attributed tagging errors to her on an EDAC report. On that date, Walters received an e-mail from Scott Hicks of Alyeska and this informed him that the complainant had reported tagging errors to some eight Alyeska personnel. (JX 35).

Walters testified that at the October 4, 2000 meeting, there was discussion about moving designers from pump stations to Fairbanks. However, he denied making derogatory remarks about the complainant at that meeting. (TR 1742).

When asked about the EDAC report, Walters noted that the complainant sent an e-mail to him on October 31, 2000 regarding tagging errors cited by Karen Allen. (See JX 35). Walters spoke to Allen who reported that this had been miscommunication between Sayre and Allen.

Walters agreed that the October 31, 2000 e-mail to Scott Hicks and others regarding NPMS tag numbers was not addressed to any VECO employee. Walters and other VECO employees learned of the tagging issue when Hicks forwarded copies of the e-mail. Walters stated that VECO personnel such as Redmond and Nuss had been work on this issue. (TR 1747).

Atkinson was engaged to conduct a third investigation. Interviewees included Walters, Lowdermilk, Chafee, Nuss, Karen Allen, and the complainant.

Allen informed Atkinson that errors cited by the EDAC were automatically flagged and were not charged to the complainant. (JX 42). Nuss stated that the complainant would not collaborate with others on the drawings but would merely redline drawings and return these to Fairbanks.

The complainant informed Atkinson that Walters spread rumors about her in December 1999 and in October 2000. When asked about the EDAC errors Sayre stated that she had sent e-mails to Allen but did not use the telephone as Allen was hard to reach. The complainant stated that the October 31, 2000 e-mail was sent to Hicks as he was the keeper of the punch list for NPMS. (JX 40).

Atkinson concluded, in part

Ms. Sayre's behavior, as seen in her complaint against Mr. Walters, miscommunication with Karen Allen and handling of the revised tag numbers at NPMS, demonstrates an inability or unwillingness to constructively interface with others within VECO to reach resolution on issues that arise in the course of the work. In each of the three instances cited above, one would expect that a reasonable person with strong interpersonal skills would attempt to reason through the problem by initiating a discussion with the party in question and then, if unsuccessful, initiate a discussion with their management. In each case, Ms. Sayre chose a different course that either perpetuated or initiated wider conflict within the organization.

It is evident that Ms. Sayre made accusations about David Walters when she accused him of: "spreading unfounded rumors"; making "completely untruthful statements about [her] character and work situation"; and "harassment and retaliation against [her]" and that these accusations turned out to be false. It could be said that if Ms. Sayre truly believed her accusations, then (in her mind) she was not making false accusations. However, there is also some evidence that Ms. Sayre knew that she had, at minimum, mischaracterized the situation.

VECO Alaska's Expectations For An Open Work Environment states the following as an expectation of all

employees: "If you have a problem, be it safety related or otherwise, first address it through your supervisor. If, for any reason, you cannot use your supervisor, work to resolve your concern directly through another member of management, or through your human resources representative." In the case of the Heating and Ventilation tag numbers at North Pole Metering Station, Ms. Sayre did not do this. Instead, she sent a note to eight APSC client personnel without even copying her own management. As a result, her own organization was blindsided and had no opportunity to address the problem before it became a 'crisis'. Ms. Sayre states that she believed that her role was to alert the APSC Project Manager, Scott Hicks. However, it seems that a reasonable person would at least inform their management if they knew that information that they are about to convey will put them in some distress. (JX 35).

On January 18, 2001, Dave Rechenthin, Fairbanks District Manager of VECO sent the following letter to the complainant

Dear Ms. Sayre:

I have given you a summary of Robert Atkinson's findings from his latest investigation. His investigation shows that you are continuing to engage in the type of conduct that you have been warned about twice. You continue to be divisive, uncooperative, and hostile in dealing with your co-workers. You also continue to bypass normal communication channels.

You give no indication that you have accepted the validity of the previous criticism of your work performance. Nor have you demonstrated a willingness to change your behavior. To the contrary, your behavior continues to be disruptive to the efficiency and effectiveness of our performance. There is not any indication that your behavior is likely to change. Consequently, your employment with VECO has been terminated effective today. (JX 47).

Ms. Sayre was engaged in protected activity in expressing concerns regarding tagging, inaccuracies in reports, and alleged harassment by other employees. Both firms were aware of the raising of these concerns. The dismissal was an obvious adverse employment action. As the third investigation began only a few

months after the second warning and two week suspension there is an inference of a retaliatory motive.

VECO argues that the dismissal was justified as allegations that Walters made untruthful statements about her in October were not substantiated, as the complainant did not work out EDAC report problems with Karen Allen, and as she would address issues to Alyeska with consulting VECO employees.

The allegation against Walters was unfounded and the complainant could have resolved the EDAC report problem in a more appropriate manner. It is true that the complainant was free to raise issues with Alyeska. However, Alyeska referred the NPMS tagging issue back to VECO as Alyeska did not have expertise on this matter. The complainant did not copy any VECO personnel on this issue. However, numerous VECO people were undertaking corrections at that time.

It must be observed that when either Sayre or Sanabria was at PS7 they were the only VECO employees at the site. Johnson and later, Rechenthin, were her supervisors and they were located in Fairbanks, some 50 miles away. While Alyeska employees had some input as to job assignments for Sayre, there was no supervisory responsibility. One can foresee a situation where Sayre, or Sanabria would be in the habit of primarily dealing with Alyeska employees at the site.

However, VECO has demonstrated that the adverse action was motivated by legitimate nondiscriminatory reason.

At this point, the complainant must show that proffered reason was not the true reason for the adverse action and that the protected activity was the real reason for the action.

The complainant argues that Atkinson was more focused on accusations against her than he was on her complaints. Ms. Sayre states that her communications to Hicks and other Alyeska personnel were similar to those made by Sanabria. The complainant also reports that she was "polite" in communications with Karen Allen regarding the EDAC report. The complainant maintains that Walters did spread false rumors about her.

The record does indicate that Atkinson did not interview the complainant until shortly before his report was completed. However, it is clear that he had family problems in that time frame as well as difficulty in scheduling the complainant's interview.

While Walters may have made comment regarding a settlement near the time of Judge DiNardi's decision, there is no documentation of any subsequent derogatory comments. It is noted that communications between Karen Allen and the complainant were somewhat lacking in proper business tone.

Hicks from Alyeska did encourage an open dialogue. However, prior to contact with Hicks, the complainant did not make any significant attempt to discover any progress that her company had made on the tagging issue. Hicks merely bucked the issue back to VECO. VECO personnel had been working on this issue, and the complainant's report to Hicks did not further the interests of either company.

Thus, the undersigned concludes that disciplinary actions undertaken by VECO and/or Alyeska from October 1999 through January 2001 were justified and were not retaliatory.

Therefore, it is hereby recommended that the complaints filed under the Clean Air Act and other Whistleblower Statutes be dismissed.

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia